

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

REDACTED PUBLIC VERSION

v.

Case No. 19-CR-227-1-LJV

JOSEPH BONGIOVANNI,

Defendant.

**DEFENDANT JOSEPH BONGIOVANNI'S BRIEF
REGARDING WHY INQUIRY INTO SPECIFIC ACTS OF
UNTRUTHFULNESS OF KATRINA NIGRO SHOULD BE
PERMITTED ON THE DEFENSE'S REDIRECT OF RUTHANN ARIDA**

Prior to trial, the government disclosed an email that government witness Ruthann Arida sent to the FBI on June 13, 2024. *See* GE 4562G. In this email, Ms. Arida provided the FBI with evidence that Katrina Nigro was dishonest in the past and was using her status as a witness at this trial for publicity and financial gain. More specifically, Ms. Arida stated that, prior to this trial and in the past:

- 1) [REDACTED]
[REDACTED]
- 2) [REDACTED];
- 3) [REDACTED];
- 4) [REDACTED]
[REDACTED]
- 5) [REDACTED]
[REDACTED]
- 6) [REDACTED]

7) [REDACTED].

Such evidence directly contradicts Nigro's claims that she was scared and reluctant to testify in this case and that she sought publicity for the purpose of protection. In her email, Ms. Arida stated to the FBI that "[REDACTED]

[REDACTED].” *Id.* Based on the contents of this disclosure, the defense had a good-faith basis to believe that Ms. Arida could offer opinion and reputation evidence regarding Katrina Nigro that would be favorable to Mr. Bongiovanni.

During cross-examination of Ms. Arida, the defense adopted Ms. Arida as its own witness and asked questions about 1) Ms. Arida's opinion regarding Katrina Nigro's character for untruthfulness and 2) Ms. Arida's knowledge of Katrina Nigro's reputation for untruthfulness. The Court permitted inquiry into both topics and Ms. Arida testified that she believed that Katrina Nigro was an untruthful person and had a reputation for untruthfulness.

On redirect/cross examination of Ms. Arida, the government attempted to undermine the opinion and reputation testimony offered by Ms. Arida in two fashions. First, the government attacked Ms. Arida as a biased and interested witness. *See* Rule 607; *see also United States v. Abel*, 469 U.S. 45, 50-51 (1984) (holding that proof of bias is almost always relevant during cross examination). This line of attack centered on Ms. Arida having a parenting relationship with Peter Gerace and attending at least one court hearing involving Peter Gerace at which she sat on his side of the courtroom. *See* Transcript at 22:2-23:13 (financial support of child); 26:7-29:3 (interest in case, appearing in court); 30:22-31:17 (impact on family). Second, the government attacked Ms. Arida's testimony by asking Ms. Arida factual and hypothetical questions regarding testimony offered by Ms. Nigro at this trial. The government asked whether Ms. Arida had any reason to disagree with certain facts that mirrored answers offered by Ms. Nigro, such as:

18 Q. Okay. If Ms. Nigro said Joe Bongiovanni is friends with
19 Peter Gerace, you wouldn't have any reason to disagree with
20 that, right?
21 A. No.
22 Q. None at all, right?
23 A. No.

T. at 31:18-23.

22 Q. If Ms. Nigro said women who worked at Pharaoh's used
23 drugs, you wouldn't have any reason to disagree with that,
24 right?
25 A. No.

T. at 42:22-25.

7 Q. If she said that women who worked at Pharaoh's bought
8 drugs from people at Pharaoh's, you wouldn't have any reason
9 to disagree with that, right?
10 A. No.

T. at 43:7-10.

16 Q. If she said Peter blew lines of coke, would you have any
17 reason to disagree with that?
18 A. No.
19 Q. If she said that women at Pharaoh's were put in
20 precarious situations with men that came to Pharaoh's, would
21 you have any reason to disagree with that?
22 MR. SINGER: Objection, hearsay and 403.
23 THE COURT: Overruled.
24 THE WITNESS: Yes.

T. at 43:16-24.

13	Q. Katrina Nigro, if she testified, or if she told you that
14	Joe Bongiovanni and Peter Gerace were friends, you wouldn't
15	have any reason to disagree with that either, right, ma'am?
16	A. No.

T. at 44:13-16.

This line of cross was employed by the government to show that Nigro's answers at this trial were truthful and accurate. Over defense objection¹, Ms. Arida testified that she generally agreed that the information offered by Ms. Nigro was not subject to dispute.

On re-direct, the defense attempted to rehabilitate Ms. Arida's opinion as well as address the "human lie detector testimony" solicited by the government by inquiring about specific acts of untruthfulness committed by Katrina Nigro that informed Ms. Arida's opinion of Katrina Nigro's untruthfulness. The government objected. This Court ordered briefing on the issue. For the reasons set forth below, this Court should find that the government "opened the door" to inquiry regarding specific acts of untruthfulness committed by Katrina Nigro that form the basis of

¹ The defense levied objection to this testimony on two bases. First, the defense objected on the ground that the questions elicited impermissible hearsay pursuant to Rule 801 and 803. Second, the defense objected on Rule 403 grounds because the testimony was unfairly prejudicial. More specifically, the Rule 403 objection invoked the Second Circuit's prohibition of 1) having a witness opine on the credibility of another witness at trial because such testimony constitutes improper bolstering, *see, e.g., United States v. Scop*, 846 F.2d 135, 142 (2d Cir.), *rev'd in part on reh'g on other grounds*, 856 F.2d 5 (2d Cir. 1988) ("The credibility of witnesses is exclusively for the determination by the jury, *United States v. Richter*, 826 F.2d 206, 208 (2d Cir. 1987), and witnesses may not opine as to the credibility of the testimony of other witnesses at the trial."), and 2) the government posing hypothetical questions to defense character witnesses which assume the defendant's guilt, *see, e.g., United States v. Oshatz*, 912 F.2d 534, 539 (2d Cir. 1990) (holding that "hypothetical questions, posed to non-expert character witnesses and based on an assumption of defendant's guilt, should not be asked because they undermine the presumption of innocence to which a defendant is entitled and suggest that there may be evidence of defendant's guilt in the hands of the prosecutor that goes beyond the evidence before the jury.") While Katrina Nigro is not the defendant in this case, the nature of the questions posed to Ms. Arida requested the jury to assume both that Nigro was truthful and that Mr. Bongiovanni was, therefore, guilty. The Court overruled defense objections to practically all of these questions.

Ms. Arida's opinion. Moreover, the Court should find that bases exist for the admission of some of this evidence independent of Rule 405 and 608.

A. Rule 405, Rule 608, and Opinion/Reputation evidence regarding untruthfulness.

Pursuant to Rule 404, evidence of a witness's character generally is not permitted, but Rule 404(a)(3) permits inquiry into a witness's character if permitted by Rules 607, 608, and 609. Pursuant to Rule 608(a), a "witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked." Pursuant to Rule 405(a), "[w]hen evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion." Consistent with Rule 405(a) and Rule 608(b)(2), a party is permitted to ask a witness about specific instances of conduct that bear on the character for truthfulness or untruthfulness of "another witness whose character the witness being cross-examined has testified about." *See* Rule 608(b)(2); *see also* Rule 405(a) ("On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct."); *See Hickson Corp. v. Norfolk S. Ry.*, 124 F. App'x 336, 343 (6th Cir. 2005) ("Under Rule 405, once a party 'opens the door' to reputation or character evidence on direct examination, inquiry is allowed into 'relevant specific instances of conduct' that rebut or impeach that evidence."). The purpose of permitting inquiry into relevant specific acts involving the truthfulness or untruthfulness of "another witness whose character the witness being cross-examined has testified about," *see* Rule 608(b)(2), is to allow an opponent to challenge and impeach the opinion offered by the testifying witness and to show the jury that the testifying witness' opinion may not carry much weight.

B. The specific acts evidence solicited by the government did not constitute *prior specific acts* of truthfulness of Katrina Nigro; instead, the government solicited this testimony to prove specific acts of truthfulness of Katrina Nigro *at this trial*.

When the government started its cross examination of Ms. Arida, it could have asked Ms. Arida whether she was aware of *previous acts* of truthfulness of Ms. Nigro. Under Rule 405(a) and Rule 608(b)(2), this line of inquiry is permitted because such “have you heard” and “do you know” questions are the type of questions classically used to challenge the testifying witness’ opinion. For example, the government could have asked Ms. Arida whether she knew that “Katrina Nigro made a mistake on her taxes in 2014 and informed the IRS about the mistake and returned a refund that she was not entitled to because of the mistake” (assuming this hypothetical is true and the government had a “good-faith” basis to ask the question). This previous (and hypothetical) specific act of truthfulness would have been probative to challenge the foundation of Ms. Arida’s opinion. However, the government chose not to ask Ms. Arida any questions regarding *previous acts* of truthfulness involving Katrina Nigro. Instead, the government purposefully asked Ms. Arida questions designed to show that Katrina Nigro’s *trial testimony* was truthful. Such questions did not involve *previous specific acts* at all. The defense levied objections to these questions as impermissible hearsay, bolstering, and guilt-assuming hypotheticals. *See infra* at n. 1. The Court overruled these objections and permitted Ms. Arida to affirm that during specific instances *in this trial*, Ms. Nigro had told the truth.

After asking these questions, the government attempted to cast its rational for making these inquires in terms of challenging Ms. Arida’s ability to perceive events accurately:

15 **MR. COOPER:** Judge, I would respond to that that my
 16 questions were about the -- her ability to make certain
 17 perceptions when she was associated with Peter, when she was
 18 associated with Katrina, if she was invited to certain events.
 19 That's completely extraneous to what she wants -- what would
 20 like to have this witness talk about, which are totally
 21 unrelated things where she thinks --

T. at 48:15-21. But an examination of the questions asked by the government tells a different story. Each of the questions asked of Ms. Arida had nothing to do with Ms. Arida's ability to perceive events accurately; rather, *all* of the questions had to do with whether Katrina Nigro's trial testimony was truthful and accurate. The record is replete with such examples.

18 Q. Okay. If Ms. Nigro said Joe Bongiovanni is friends with
 19 Peter Gerace, you wouldn't have any reason to disagree with
 20 that, right?
 21 A. No.
 22 Q. None at all, right?
 23 A. No.

T. at 31:18-23. This question has nothing to do with Ms. Arida's ability to perceive events. It is focused on whether Katrina Nigro testified truthfully about Bongiovanni and Gerace being friends.

22 Q. If Ms. Nigro said women who worked at Pharaoh's used
 23 drugs, you wouldn't have any reason to disagree with that,
 24 right?
 25 A. No.

T. at 42:22-25. This question has nothing to do with Ms. Arida's ability to perceive events. It is focused on whether Katrina Nigro testified truthfully about women who worked at Pharaoh's Gentlemen's Club using drugs.

7 Q. If she said that women who worked at Pharaoh's bought
 8 drugs from people at Pharaoh's, you wouldn't have any reason
 9 to disagree with that, right?
 10 A. No.

T. at 43:7-10. This question has nothing to do with Ms. Arida's ability to perceive events. It is focused on whether Katrina Nigro testified truthfully about women who worked at Pharaoh's Gentlemen's Club purchasing drugs from other people at Pharaoh's.

16 Q. If she said Peter blew lines of coke, would you have any
 17 reason to disagree with that?
 18 A. No.
 19 Q. If she said that women at Pharaoh's were put in
 20 precarious situations with men that came to Pharaoh's, would
 21 you have any reason to disagree with that?
 22 MR. SINGER: Objection, hearsay and 403.
 23 THE COURT: Overruled.
 24 THE WITNESS: Yes.

T. at 43:16-24. Neither of these questions has anything to do with Ms. Arida's ability to perceive events. The first question is focused on whether Katrina Nigro testified truthfully about Gerace using cocaine. The second question is focused on whether Katrina Nigro testified truthfully about female workers at Pharaoh's Gentlemen's Club being placed in precarious positions with male patrons.

13 Q. Katrina Nigro, if she testified, or if she told you that
 14 Joe Bongiovanni and Peter Gerace were friends, you wouldn't
 15 have any reason to disagree with that either, right, ma'am?
 16 A. No.

T. at 44:13-16. This question has nothing to do with Ms. Arida's ability to perceive events. It is focused on whether Katrina Nigro testified truthfully about Bongiovanni and Gerace being friends.

C. The Court should permit inquiry into the specific acts of untruthfulness that form the basis of Ms. Arida's opinion.

At least two reasons exist which permit the defense to inquire about specific acts of untruthfulness that inform Ms. Arida's opinion. And even if Ms. Arida's impermissible testimony is struck from the record, the government (and the Court) "opened the door" to inquiry using both rationales below.

i. The government's use of specific acts of truthfulness for impeachment permits the defense to use specific acts of untruthfulness for rehabilitation.

When an opponent attacks the basis of a testifying witness's opinion regarding the untruthfulness of another witnesses by using specific acts of truthfulness of the other witness, then the opponent "opens the door" to the party who offers the character testimony to inquire into the relevant specific acts that support the testifying witness's opinion. Here, the government purposefully chose to impeach Ms. Arida's opinion not by pointing to bias only, but by challenging the foundation of Ms. Arida's opinion using specific acts of truthfulness. While these specific acts did not involve *prior acts* of truthfulness that occurred before trial, the government used specific acts evidence nonetheless. As a result, this cross-examination technique "opened the door" to the defense's use of specific acts evidence to rehabilitate Ms. Arida's opinion.

ii. The government's strategy of using Ms. Arida to improperly bolster Nigro's testimony – and the Court permitting this to happen – necessitates a remedy. The remedy is either striking the improper testimony or permitting the defense to inquire into prior specific acts of untruthfulness by Nigro.

As set forth above, the questions asked by the government 1) were not probative of Ms. Arida's knowledge, perception, or bias and 2) did not involve prior acts of truthfulness of Nigro designed to impeach Ms. Arida's opinion of Nigro's untruthfulness; rather, the questions were designed to bolster Katrina Nigro's trial testimony only. The defense objected to these questions. The Court overruled these objections and permitted the government to ask Ms. Arida whether she

“disagreed” with Nigro’s trial testimony in this case. These questions also asked the witness to assume Mr. Bongiovanni’s guilt. The defense believes that the Court’s rulings on these questions were erroneous and the admission of this testimony was improper. And now the defense is left in the position where it must address and defend against these impermissible answers in some fashion.

As this Court knows, “[d]istrict courts are empowered to ‘correct errors made in the course of trial while [they] still ha[ve] the opportunity to do so.’” *United States v. Robinson*, 749 F. App’x 35, 37 (2d Cir. 2018) (quoting *United States v. Burger*, 739 F.2d 805, 810 (2d Cir. 1984)). This power includes the ability to strike impermissible testimony from the record after-the-fact. This power also includes the ability to admit otherwise inadmissible evidence. More specifically, the “concept of ‘opening the door,’ or ‘curative admissibility,’ gives the trial court discretion to permit a party to introduce otherwise inadmissible evidence on an issue (a) when the opposing party has introduced inadmissible evidence on the same issue, and (b) when it is needed to rebut a false impression that may have resulted from the opposing party’s evidence.” *United States v. Rea*, 958 F.2d 1206, 1225 (2d Cir. 1992) (citations omitted); accord *United States v. Howard*, 639 F. App’x 686, 689 (2d Cir. 2016).

Here, the defense believes that this Court improperly admitted testimony by Ms. Arida regarding the truthfulness of Nigro’s testimony at this trial and improperly permitted the government to pose hypotheticals which assumed Mr. Bongiovanni’s guilt. These ruling were erroneous and should be remediated. One option the Court has is to strike this testimony from the record. While the defense believes that striking this testimony would be proper, under the circumstances, the defense is concerned that striking this testimony and instructing the jury to not consider this testimony will not be effective because such impermissible opinion testimony was not limited to just one question; instead, the government asked several questions of Ms. Arida that had bearing on the truthfulness of Nigro’s trial testimony. Moreover, Katrina Nigro is a key witness to

Count 2 of the indictment. She is the only government witness who says that Pere Gerace allegedly paid money to Mr. Bongiovanni. Thus, Nigro's credibility, in general, as well as more specifically, regarding her allegation of the payment of a bribe on three occasions, is of critical importance. For this reason, the defense does not believe that striking this testimony alone will cure the erroneously admitted evidence and "curative admissibility" is the better remedy.

While the defense does not believe that introducing specific acts of Nigro's untruthfulness on redirect would be impermissible under Rule 405(a), by permitting the defense to ask questions of Ms. Arida about the specific acts of untruthfulness committed by Nigro that inform her opinion regarding Nigro's untruthful character, the Court will level the playing field and permit the defense to rebut the false impression that Ms. Arida believes that Nigro was telling the truth at this trial. This remedy will cure the defect of this improperly admitted testimony. And the Court should permit the defense to inquire about the specific acts of untruthfulness that Ms. Arida told the FBI about in her email.

D. Alternatively, some of the specific acts of which Ms. Arida is aware are admissible to prove bias/self-interest pursuant to Rule 402 and amissible under the doctrine of impeachment by contradiction.

While Rule 608(b) generally disallows the introduction of testimony and evidence to extrinsically prove specific instances of conduct of a witness relating to truthfulness or untruthfulness, there are two well recognized exceptions to that rule. First, a defendant can introduce extrinsic evidence of a government witness's bias and self-interest. Second, a defendant can introduce extrinsic evidence to contradict a government witness's testimony so long as the evidence is not collateral. Under both doctrines, the Court should admit many of the acts Ms. Arida told the FBI about in her June 13, 2024 email.

i. **Introduction of certain acts to prove bias and self-interest.**

Consistent with Supreme Court precedent, the Second Circuit has opined “that impeachment for bias is admissible under Rule 402 even when the impeachment material is not independently admissible under Rule 608 as ‘concerning [the witness’s] character for truthfulness or untruthfulness.’” *United States v. Figueroa*, 548 F.3d 222, 229 & n.8-9 (2d Cir. 2008) (citing *Abel*, 469 U.S. at 51, 55-56 & n.4 and Rule 608) (footnotes omitted). As the Second Circuit explained:

Rule 402 provides, in pertinent part: “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority.” Fed. R. Evid. 402. “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. **“A successful showing of bias on the part of a witness would have a tendency to make the facts to which [s]he testified less probable in the eyes of the jury than it would be without such testimony.”** *Abel*, 469 U.S. at 51.

Figueroa, 548 F.3d at 229 n.8 (emphasis added). “Bias is a term used in the ‘common law of evidence’ to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, [her] testimony in favor of or against a party. **Bias may be induced by a witness’ like, dislike, or fear of a party, or by the witness’ self-interest.**” *Id.* at 230 (emphasis added) (citing *Abel*, 469 U.S. at 52.).

Here, Katrina Nigro has a bias against Peter Gerace and Joseph Bongiovanni that colors her testimony. Nigro also has a personal self interest in the continuation and outcome of Mr. Bongiovanni’s and Gerace’s cases. As Ms. Arida observed, Katrina Nigro’s involvement in this case has provided Nigro with a platform and notoriety. Nigro has monetized her platform and notoriety in several ways. First, she has used her notoriety and the publicity surrounding this case as a means to get cast in a film depicting the mafia, sex, drugs, and alcohol. Without being a witness in this matter, this opportunity would not exist. Second, Ms. Nigro has used this case to make herself

more widely known. For someone who is an exhibitionist and who uses social media and podcasts as a source of income, “fame” is a large determiner of an influencer’s ability to monetize her social media endeavors. Without this case, Nigro would be less well known. All of this evidence constitutes proof of bias and self-interest. Thus, the holdings in *Abel* and *Figueroa* as well as Rule 402 permit the extrinsic introduction of this evidence. The Court should admit this evidence under this rationale which is independent of any restrictions embodied in Rule 608(b).

ii. Introduction of certain acts to impeach by contradiction.

Under the doctrine of impeachment by contradiction, when a government witness lies about an event/subject during her testimony, the defendant is permitted to prove that the government witness lied by presenting extrinsic proof of the lie, thereby contradicting the validity of her testimony about the event/subject. Importantly, impeachment by contradiction operates independently of the restrictions within Rule 608(b). *See, e.g., United States v. Benedetto*, 571 F.2d 1246, 1250 n.7 (2d Cir. 1978) (“Rule 607 appears to allow the continuation of federal practice in admitting extrinsic evidence to impeach specific errors or falsehoods in a witness’ direct testimony, subject to Rule 403 considerations.”) (citing *Walder v. United States*, 347 U.S. 62 (1954)); *United States v. Opager*, 589 F.2d 799, 802-03 (5th Cir.1979) (holding that Rule 608(b)’s prohibition of extrinsic evidence used to prove specific instances of misconduct does not apply when the evidence is offered to contradict a witness’s testimony as to a material issue of the case); *United States v. Castillo*, 181 F.3d 1129, 1132 (9th Cir. 1999) (“Rule 608(b) prohibits the use of extrinsic evidence of conduct to impeach a witness’ credibility in terms of his general veracity. In contrast, the concept of impeachment by contradiction permits courts to admit extrinsic evidence that specific testimony is false, because contradicted by other evidence . . .”).

The only restriction with the doctrine is that the contradiction sought to be proven extrinsically must relate to a material rather than collateral matter in the case. *See, e.g., United States v.*

Hendrickson, 417 F.2d 225, 228 (3d Cir. 1969) (holding that a party cannot offer “extrinsic evidence to impeach [a witness]’s testimony on a collateral matter.”); *see also United States v. Payne*, 102 F.3d 289, 294 (7th Cir. 1996) (“[O]ne may not impeach by contradiction regarding collateral or irrelevant matters.”). “A matter is collateral when it cannot reasonably be considered crucial or material to the issues on trial.” *United States v. Budzanoski*, 462 F.2d 443, 455 (3d Cir. 1972). “[T]he determinative question in deciding whether extrinsic evidence contradicting a witness’ testimony is admissible is not whether the contradicting extrinsic evidence is material or collateral, but whether the assertion that the impeaching party seeks to contradict is itself material or collateral.” *Justice v. Hoke*, 90 F.3d 43, 48 (2d Cir. 1996) (citations omitted); *see also United States v. Innamorati*, 996 F.2d 456, 479 (1st Cir. 1993) (excluding evidence proposed by the defense to contradict a government witness because “the proposed contradiction involved a matter collateral to the main issues in this trial, since the [] incident did not in any way involve any of the defendants or the charges against them”).

At this trial, Katrina Nigro testified that she was scared about testifying because of Peter Gerace’s alleged ties to Italian Organized Crime. Nigro also testified that she publicized her involvement as a witness in this case to help protect her against threats and intimidation, reasoning that the greater the notoriety she had as a result of her own efforts to publicize her involvement in this case, the more likely it was that she would remain safe. Specific acts evidence known by Ms. Arida – more specifically, that Katrina Nigro publicized her involvement for monetary gain as well as securing roles in movies and films depicting the mafia, sex, drugs, and alcohol – contradicts Nigro’s claims of being scared and posting about her involvement in this case or the outfits that she wore to court for the purpose of protection. Furthermore, Nigro’s assertion that she posted on social media about her involvement as a witness because of her fear of IOC involves a material issue in this case, to wit: the existence of IOC in Buffalo. The government has gone to great lengths to make this trial about IOC. In fact, Nigro testified that Gerace had familial links to IOC and used

those alleged links as a tool to intimidate Nigro and others. Consequently, her assertions on this subject are not collateral, but material. As such, the defense should be permitted to use impeachment by contradiction to undermine this material assertion.

Nigro also testified that women at Pharaoh's Gentlemen's Club were mistreated. During cross-examination of Ms. Arida, the government asked Ms. Arida whether she had any reason to disagree with Nigro's assertion that women were put into "precarious situations" at Pharaoh's. *See* T. at 43:16-24. The evidence in Ms. Arida's possession, to wit: that Nigro sought roles in movies that glorify the sexual exploitation of women and chose to act in roles where women have freedom to trade sex for drugs² directly contradicts Nigro's testimony on this subject. Like IOC, the government has gone to equal lengths to portray women who work at Pharaoh's as lacking such freedom and authority. And the government used Nigro to reinforce this point. As such, Nigro's assertion is material, not collateral to this case, and the defense should be allowed to impeach her on this subject.

Finally, the admission of impeachment by contradiction evidence is governed by Rule 403. Rule 403 permits a court to exclude relevant evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion, and waste of time. Here, the evidence proposed for admission is probative of Nigro's veracity on the topic of IOC. Contradicting this point does not constitute unfair prejudice. Moreover, the facts that Ms. Arida can testify to – which impeach Nigro on this subject – can be handled quickly and constitute only a few

² By way of analogy, Courts in this district routinely admit rap video's and songs made by defendants depicting criminal behavior under the belief that the lyrics and actions in these songs depict real life as opposed to make-believe. The same is true of Nigro's movies. Acting in films that glorify sex and drugs is not just make-believe, but actions she has taken in real life. Moreover, these are not roles that a victim of sexual assault and exploitation would take. Doing so would prove traumatic. This evidence thoroughly contradicts the testimony offered by Nigro at this trial.

questions. Thus, the risk of confusion and waste of time is negligible. For these reasons, the Court should permit the defense to question Ms. Arida about her observations.

Conclusion

For the above reasons, this Court should permit inquiry into all of the specific acts known to Ms. Arida. These acts rehabilitate Ms. Arida's opinion, provide a remedy to the impermissible testimony solicited by the government, and are independently admissible to prove bias/interest as well as contradiction of Nigro's false material assertions.

Dated: September 15, 2024
Buffalo, New York

Respectfully submitted,

s/Parker R. MacKay

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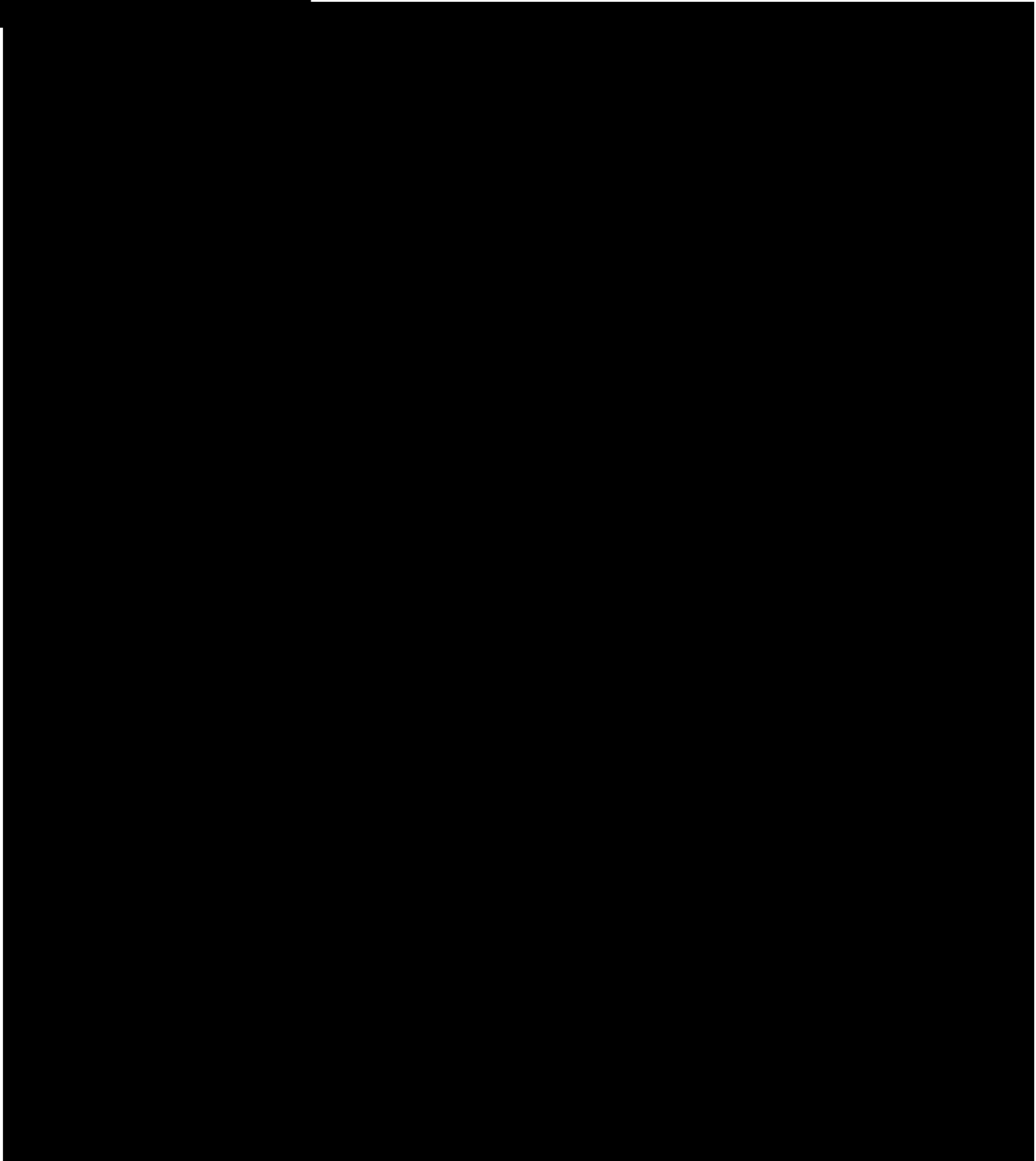
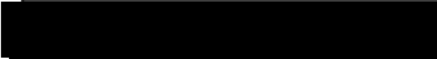
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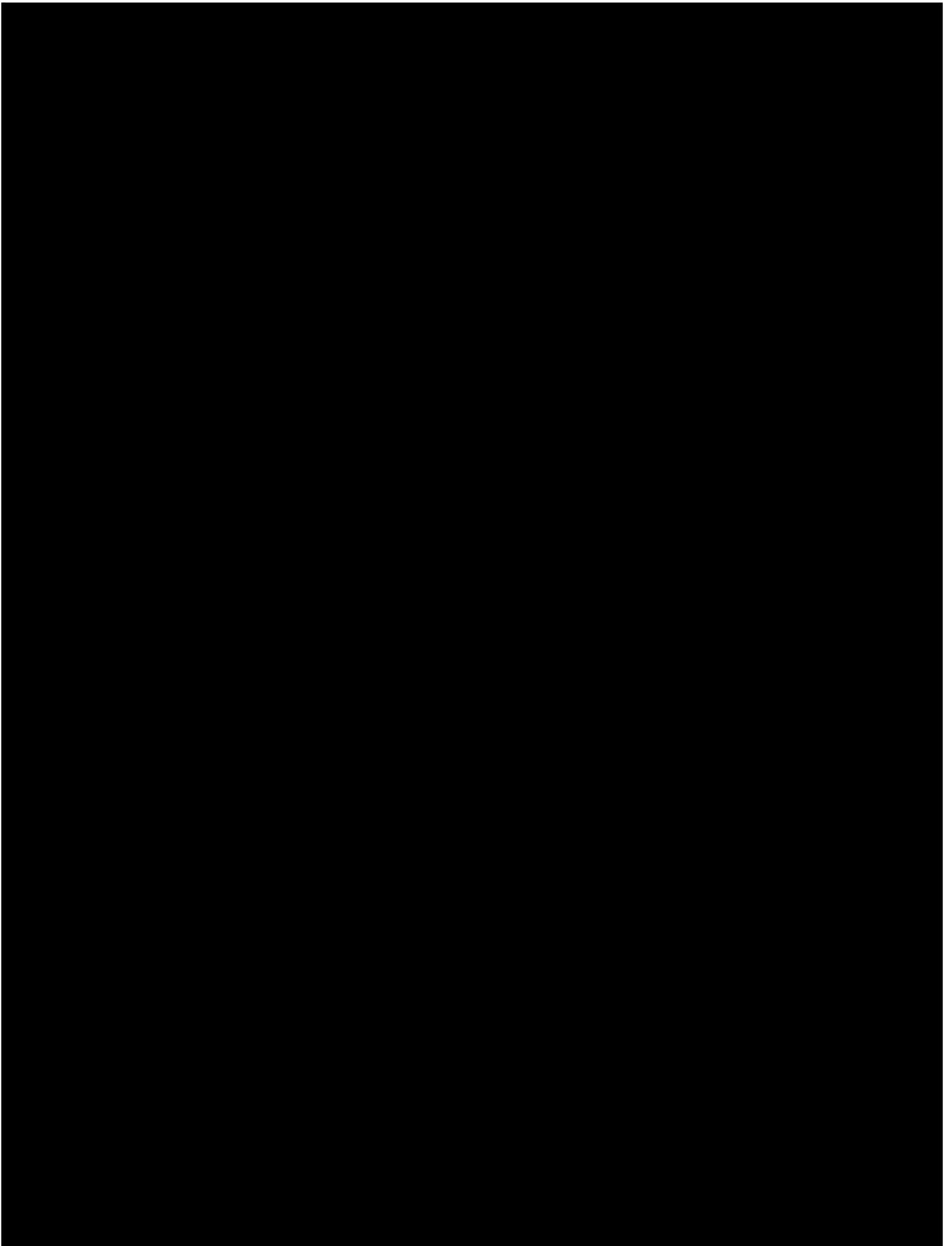
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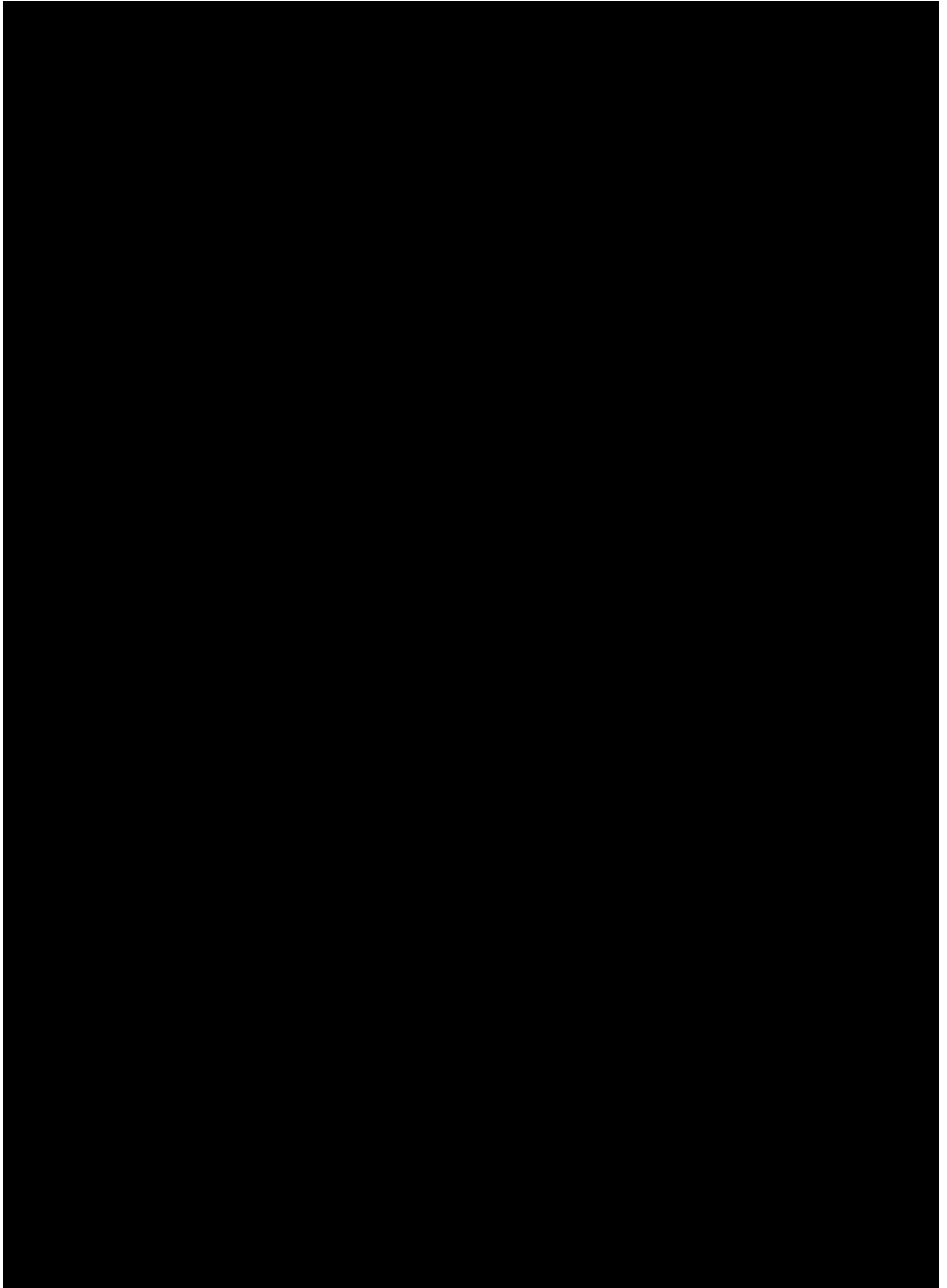
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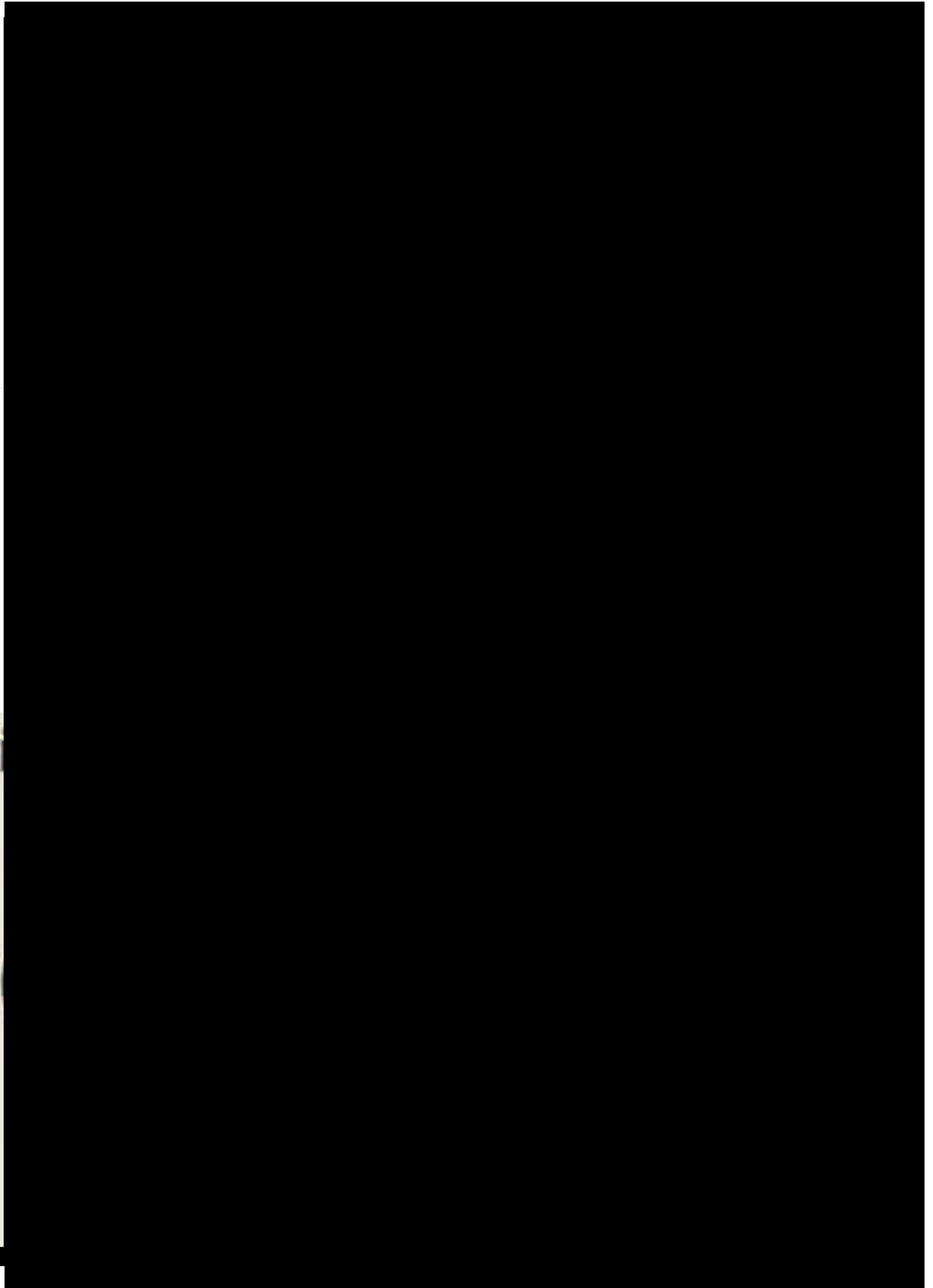
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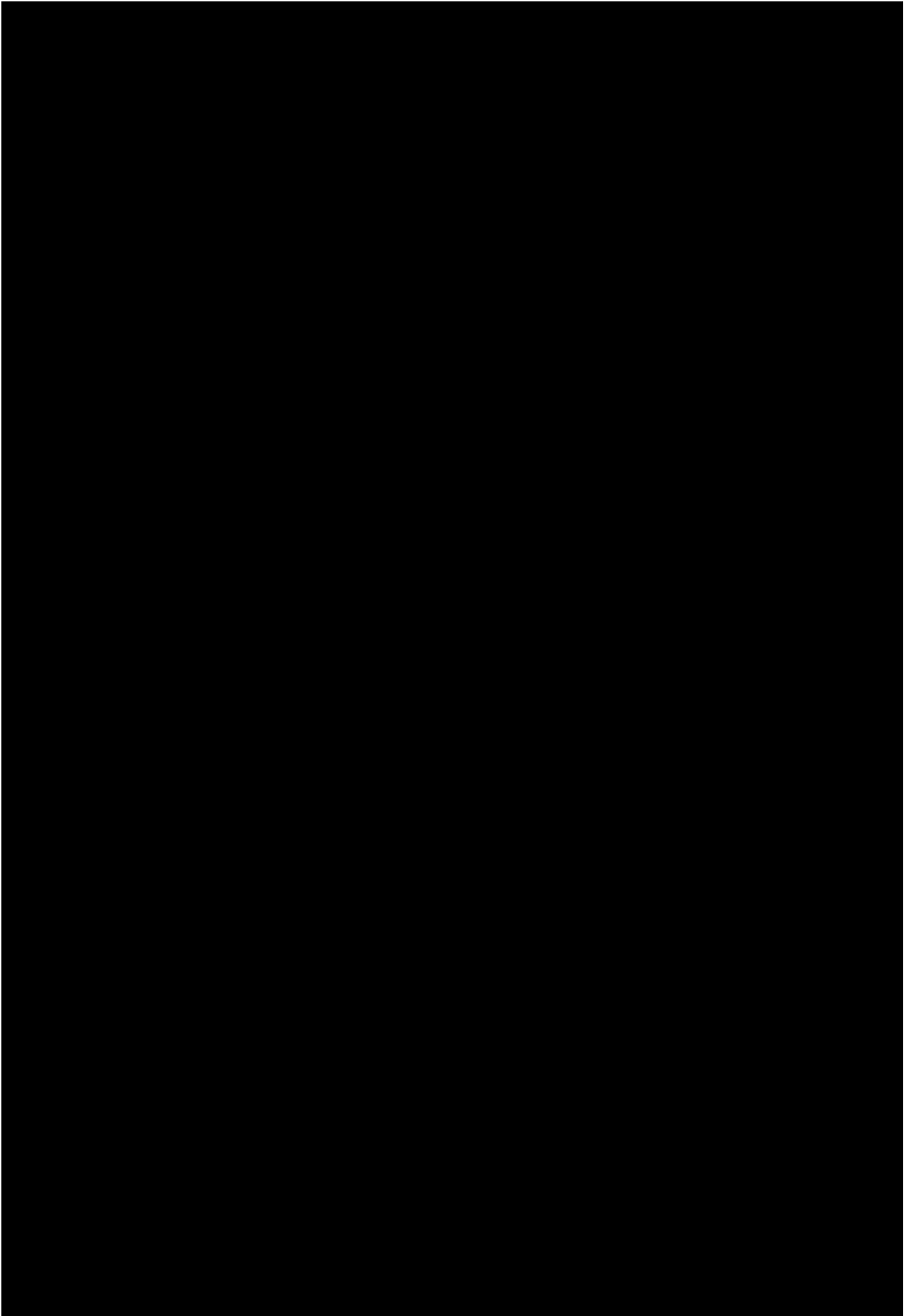
Attorneys for Joseph Bongiovanni

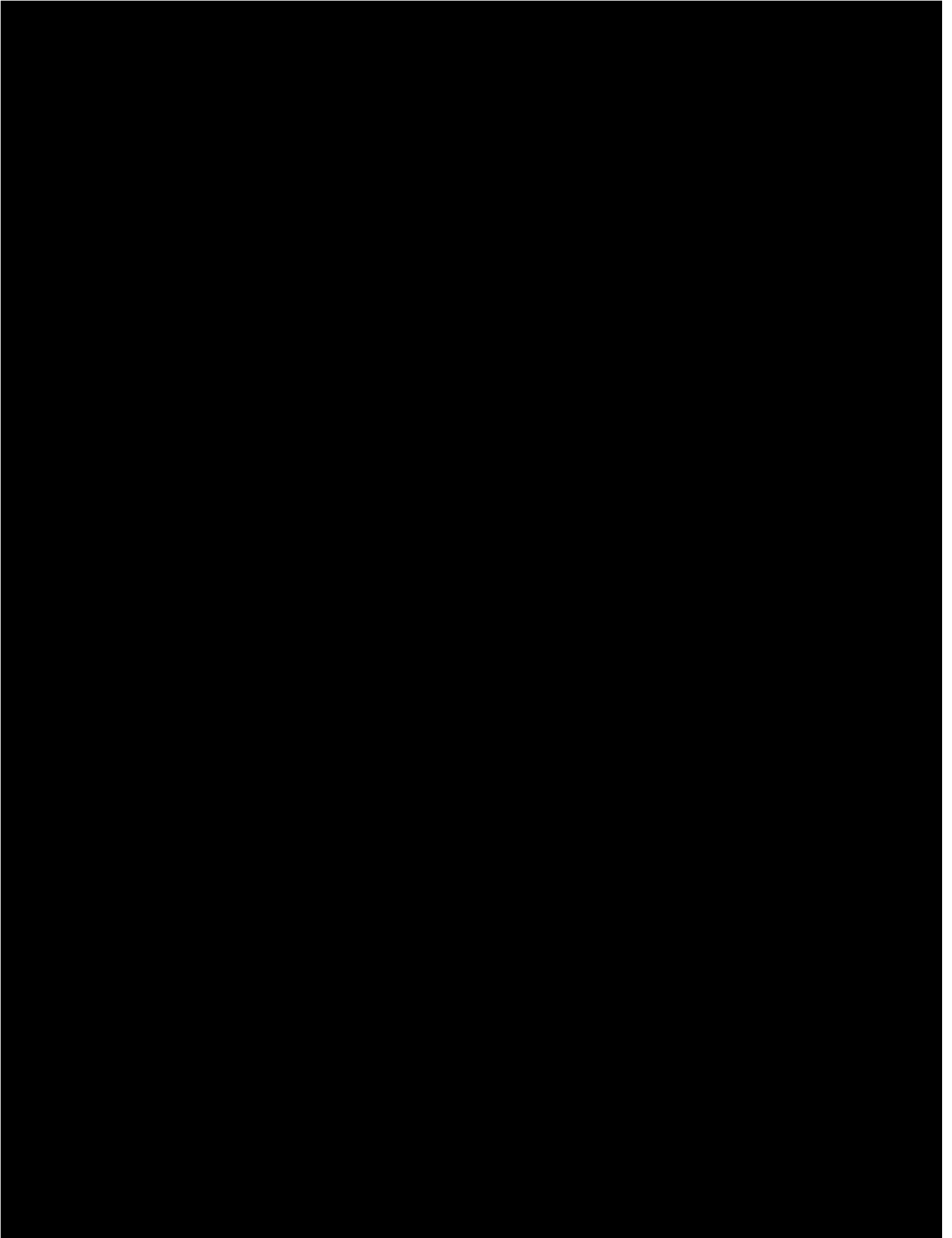




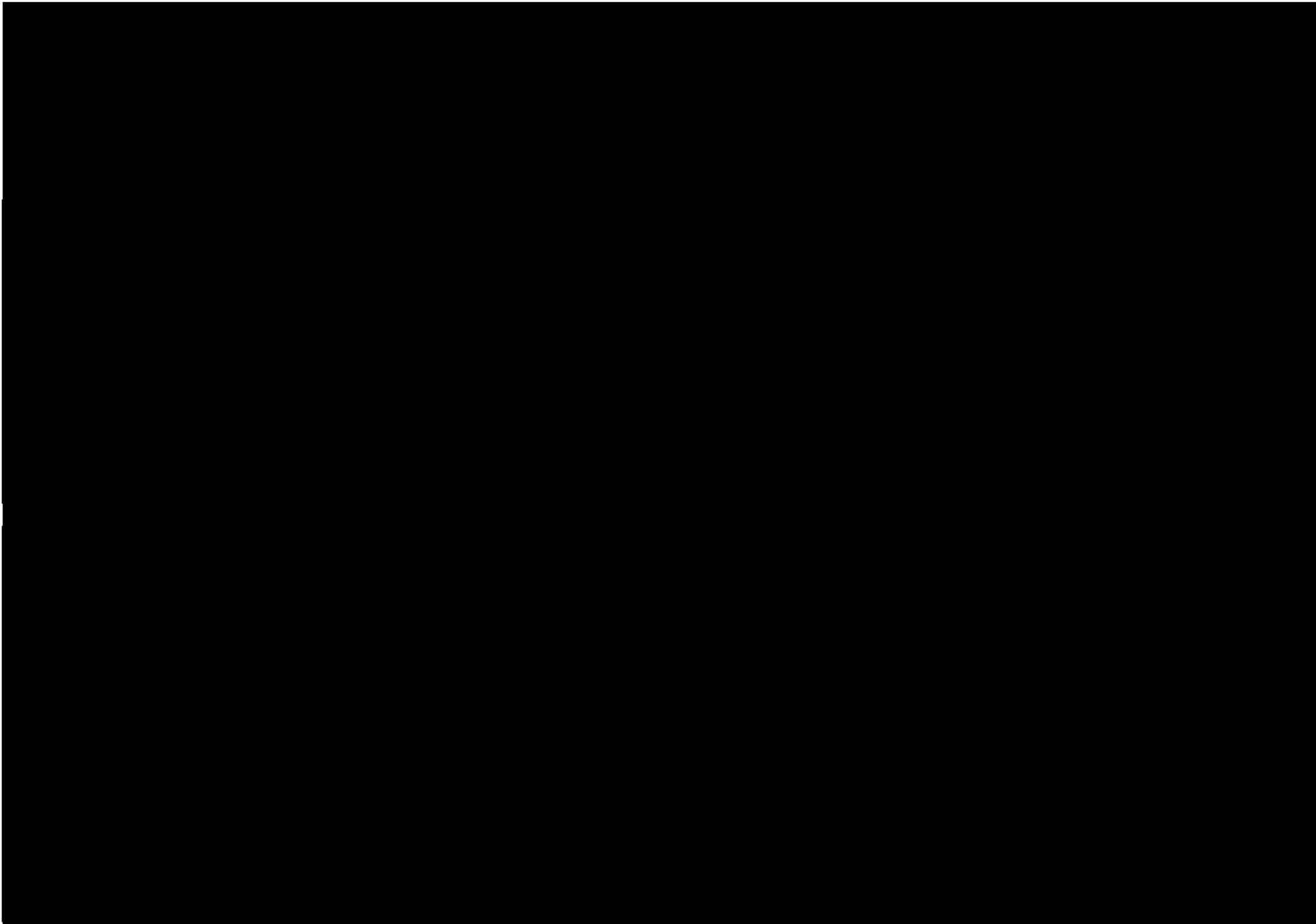












04:06PM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

September 13, 2024

TRANSCRIPT EXCERPT - CROSS-EXAMINATION OF RUTHANN ARIDA
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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And

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BY: PARKER ROY MacKAY, ESQ.

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And

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For the Defendant

PRESENT:

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LAW CLERK:

REBECCA FABIAN IZZO, ESQ.

COURT DEPUTY CLERK: COLLEEN M. DEMMA

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Robert H. Jackson Federal Courthouse
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(Excerpt commenced at 4:06 p.m.)

(Jury is present)

R U T H A N N A R I D A, having been duly called and sworn,
testified as follows:

CROSS-EXAMINATION BY MR. SINGER:

Q. Hi, Ms. Arida.

A. Hi.

Q. So, you testified on direct that you first met Joe
Bongiovanni through Peter Gerace.

A. Yes.

Q. And that particular photograph that we saw of you four at
the restaurant, that was something that was taken right
around the same time that you started a relationship with
Peter Gerace?

A. Yes.

Q. So at that particular dinner, was anyone using drugs?

A. No.

04:07PM 1 Q. You came to learn that Peter and Joe Bongiovanni, they
04:07PM 2 were friends based on having a relationship for a number of
04:07PM 3 years?

04:07PM 4 A. Yes.

04:07PM 5 Q. And you dated Peter Gerace starting in 2005; is that
04:07PM 6 right?

04:07PM 7 A. Yes.

04:07PM 8 Q. When was it that your relationship with Peter Gerace
04:07PM 9 ended?

04:07PM 10 A. Well, it was very tumultuous. It probably lasted about
04:07PM 11 seven or eight years on and off.

04:07PM 12 Q. Okay. So it was an on-again-off-again situation?

04:07PM 13 A. Yes.

04:07PM 14 Q. You mentioned that you had a child together; is that
04:07PM 15 right?

04:07PM 16 A. Yes.

04:07PM 17 Q. When was it that your son was born, again?

04:07PM 18 A. 2006.

04:07PM 19 Q. And how soon after your son was born did things start to
04:08PM 20 kind to become on and off with Peter?

04:08PM 21 A. Pretty much immediately.

04:08PM 22 Q. Okay. So you were on again and off again from 2006
04:08PM 23 onward?

04:08PM 24 A. Yes.

04:08PM 25 Q. All right. Now you recall that when you first started

04:08PM 1 dating Peter in 2005, that's when you saw Mr. Bongiovanni

04:08PM 2 more often?

04:08PM 3 A. Yes.

04:08PM 4 Q. But as your relationship progressed throughout the years,

04:08PM 5 you didn't see him as often?

04:08PM 6 A. No.

04:08PM 7 Q. You talked about a time where you, Peter, Joe, and his

04:08PM 8 girlfriend went down to Ellicottville?

04:08PM 9 A. Yes.

04:08PM 10 Q. And so Ellicottville, it's kind of like a ski town about

04:08PM 11 an hour south of here?

04:08PM 12 A. Yes.

04:08PM 13 Q. A bunch of shops and restaurants?

04:08PM 14 A. Yeah, shops and restaurants.

04:08PM 15 Q. Did you guys spend the night there, or did you just go

04:08PM 16 down there for the day?

04:08PM 17 A. We spent the night there.

04:08PM 18 Q. And was that just for a weekend?

04:08PM 19 A. Yes.

04:09PM 20 Q. Was that particular trip something that happened in 2005

04:09PM 21 before you got pregnant?

04:09PM 22 A. Yes.

04:09PM 23 Q. You also mentioned that you went to Niagara-on-the-Lake?

04:09PM 24 A. Yes.

04:09PM 25 Q. And that sounded like it was just a day trip?

04:09PM

1 A. Yeah.

04:09PM

2 Q. And I think you said that you did some horse-drawn

04:09PM

3 carriage and also went to some wineries?

04:09PM

4 A. Yes.

04:09PM

5 Q. And that you had some dinner?

04:09PM

6 A. Yes.

04:09PM

7 Q. And then you crossed the border and went on your separate

04:09PM

8 ways?

04:09PM

9 A. Yes.

04:09PM

10 Q. And so as far as Mr. Bongiovanni was concerned, you

04:09PM

11 wouldn't see him every day of the week --

04:09PM

12 A. No.

04:09PM

13 Q. -- when you were dating Peter?

04:09PM

14 A. No.

04:09PM

15 Q. No?

04:09PM

16 A. No.

04:09PM

17 Q. Safe to say you'd see him maybe one or two times a month?

04:09PM

18 A. Yeah, safe to say that. Maybe every other weekend, so,

04:09PM

19 yes.

04:09PM

20 Q. And in the context that you'd see him, you'd see in kind

04:09PM

21 of a social situation like a bar or restaurant?

04:10PM

22 A. Yes.

04:10PM

23 Q. Did you ever see him use any type of illegal substances?

04:10PM

24 A. Never.

04:10PM

25 Q. Did you and Peter ever use illegal substances in his

1	presence?
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2	A. Never.
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3 | Q. Peter also had another friend Dan Derenda; is that right?

4	A. Yes.
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5 Q. And Daniel Derenda, he was the commissioner of police for
6 Buffalo?

7	A. Um-hum.
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8 Q. I think he had a relationship with Peter based on the
9 fact that Mr. Derenda was a godfather to one of Peter's
0 children?

11	A. Yes.
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12 | Q. Is that your son?

13	A. No.
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14 Q. Okay. How often would you see Peter hanging out with Dan
15 Derenda?

16 **MR. COOPER:** Objection, relevance.

17 **THE COURT:** Overruled.

18 **THE WITNESS:** Not very often.

19 BY MR. SINGER:

20 Q. Was it kind of the same frequency as you saw Peter
21 hanging out with Joseph Bongiovanni?

22 | A. Yes, but less.

23 Q. You talked a little bit about your experience within the
24 strip club industry?

25	A. Yes.
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04:11PM 1 Q. And I think one of the things that you mentioned --

04:11PM 2 Excuse me, let me just get my pad.

04:11PM 3 -- one of the things you mentioned on direct is it was

04:11PM 4 very difficult to work a job like that sober; do you remember

04:11PM 5 testifying to that?

04:11PM 6 A. Yes.

04:11PM 7 Q. And in your experience, I think you also testified that

04:11PM 8 drug use is very common at exotic clubs like that?

04:11PM 9 A. Yes.

04:11PM 10 Q. And I think you also testified that based on the nature

04:11PM 11 of the work, and based on some of the pressures associated

04:11PM 12 with it, you started to use narcotics more often as time

04:11PM 13 progressed in the industry?

04:11PM 14 A. Yes.

04:11PM 15 Q. Was that your experience that other women who worked in

04:11PM 16 the industry would kind of go down a similar path?

04:11PM 17 A. Absolutely.

04:11PM 18 Q. Is that somewhat the culture that exists inside exotic

04:12PM 19 dance clubs?

04:12PM 20 **MR. COOPER:** Objection as to culture.

04:12PM 21 **THE COURT:** Go ahead.

04:12PM 22 **MR. COOPER:** There's one club that's at issue in this
04:12PM 23 trial. The culture in other clubs is not relevant to this
04:12PM 24 proceeding.

04:12PM 25 **THE COURT:** Yeah. Overruled.

04:12PM 1 **THE WITNESS:** It's common through strip clubs
04:12PM 2 everywhere in America.

04:12PM 3 **BY MR. SINGER:**

04:12PM 4 Q. Do you know a person by the name of Katrina Nigro?

04:12PM 5 A. Yes.

04:12PM 6 Q. How do you know Ms. Nigro?

04:12PM 7 A. I used to dance with her in the early 2000s. She owned a
04:12PM 8 clothing store, I bought some exotic clothing costumes from
04:12PM 9 her.

04:12PM 10 Q. So what year do you think you first met Ms. Nigro?

04:13PM 11 A. 2003 or 2004.

04:13PM 12 Q. And how -- I guess, was there a point in time where you
04:13PM 13 stopped seeing Ms. Nigro?

04:13PM 14 A. Yes.

04:13PM 15 Q. When do you think you stopped seeing Ms. Nigro? When did
04:13PM 16 that time occur?

04:13PM 17 A. What do you mean, stopped seeing her?

04:13PM 18 Q. Sure. So I guess I think you just testified that you
04:13PM 19 first met her in 2003; is that right?

04:13PM 20 A. Yes.

04:13PM 21 Q. And then after meeting her in 2003, you'd see her, it
04:13PM 22 sounds like, in work situations?

04:13PM 23 A. Yes, in work situations.

04:13PM 24 Q. You testified that she sold different types of clothing?

04:13PM 25 A. Um-hum.

04:13PM 1 Q. Were you a customer at her store?

04:13PM 2 A. Yes.

04:13PM 3 Q. And you also saw her at various clubs that you worked at?

04:13PM 4 A. Yes.

04:13PM 5 Q. And we're not talking about Pharaoh's Gentlemen's Club,
04:13PM 6 correct?

04:13PM 7 A. No.

04:13PM 8 Q. We're talking about other locations?

04:13PM 9 A. Yes.

04:13PM 10 Q. Were those locations within the City of Buffalo?

04:13PM 11 A. No.

04:13PM 12 Q. Where are those locations at?

04:13PM 13 A. Erie, Pennsylvania. Rochester.

04:13PM 14 Q. Would you go down to -- trips to Erie, Pennsylvania, or
04:14PM 15 out to Rochester with Ms. Nigro?

04:14PM 16 A. Yes.

04:14PM 17 Q. Would the two of you drive together?

04:14PM 18 A. I'm not sure if we drove together, it was a long time
04:14PM 19 ago. But we, like, we would -- she would message me and tell
04:14PM 20 me this club is, you know, I'm working here tonight, or
04:14PM 21 there's money here, so I would obviously go to that club.

04:14PM 22 **MR. COOPER:** Judge, I'm going to object at this point
04:14PM 23 to relevance on this line of questioning.

04:14PM 24 **THE COURT:** Yes, I'm not getting the relevance
04:14PM 25 either.

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MR. SINGER: May we approach, Judge?

THE COURT: Yeah, come on up.

(Sidebar discussion held on the record.)

THE COURT: I'm giving you real wide berth in cross.

MR. SINGER: I understand, Judge.

And so we're preparing to lay foundation for Ms. Arida to offer her opinion as to the character for truthfulness of Ms. Nigro, as well as her reputation within the community or the business community that she exists as far as truthfulness is concerned. I can adopt this witness as my own, or I can recall her. That's where I'm going.

MR. COOPER: Well, I think he certainly think he has to adopt the witness as his own, no question.

But I didn't make a leading objection. I mean, I actually think he was asking open-ended questions, so I'm not trying to give him a hard time about that. I didn't know where we were headed with this, and I tried to give it a little bit, but I still didn't know.

THE COURT: Okay. So you'll withdraw your objection? You'll withdraw your relevance objection?

MR. COOPER: I'll withdraw my relevance objection, but I, yeah, I may lodge some additional objections as we go, yeah.

MR. SINGER: You can object as much as you like.

MR. COOPER: Yeah.

04:15PM 1 (End of sidebar discussion.)

04:15PM 2 **THE COURT:** So the objection is withdrawn?

04:15PM 3 **MR. COOPER:** That's correct, Judge.

04:15PM 4 **BY MR. SINGER:**

04:15PM 5 Q. So getting back to the times when you were in either
04:15PM 6 Erie, Pennsylvania, or Rochester.

04:15PM 7 Would you hang out with Katrina Nigro when you were at
04:15PM 8 those clubs with her?

04:15PM 9 A. Yes, if we were with customers, if we were at the bar,
04:15PM 10 you know, I would see her and I would talk to her, yes.

04:15PM 11 Q. And so you mentioned that you first started talking to
04:16PM 12 her and associating with her back in 2002, 2003.

04:16PM 13 A. Um-hum. Yes.

04:16PM 14 Q. And I asked you a little bit about when was it that you
04:16PM 15 stopped hanging around her.

04:16PM 16 A. Around the time I met Peter.

04:16PM 17 Q. And so what time was that?

04:16PM 18 A. 2005.

04:16PM 19 Q. And was there a period of time where you reassociated
04:16PM 20 with Ms. Nigro?

04:16PM 21 A. No. Well, she -- well, that's kind of, like, a
04:16PM 22 complicated question, because she eventually ended up
04:16PM 23 marrying Peter. So she had to -- I had to coparent with this
04:16PM 24 woman.

04:16PM 25 Q. Yeah. And I guess that's what I was getting at.

04:16PM 1 So we talked a little bit earlier in your direct about
04:16PM 2 how you had a child in common with Peter?

04:16PM 3 A. Yes.

04:16PM 4 Q. It was a son who was born in 2006?

04:16PM 5 A. Yes.

04:16PM 6 Q. So after you said things started to get rocky with Peter,
04:16PM 7 you said it was a little on and off?

04:16PM 8 A. Yes.

04:16PM 9 Q. For a couple different years?

04:16PM 10 A. Um-hum.

04:17PM 11 Q. And during that period of time, did Peter start dating
04:17PM 12 Katrina Nigro at some point?

04:17PM 13 A. Yes.

04:17PM 14 Q. So when Peter was dating Katrina Nigro, what type of
04:17PM 15 interactions did you have with Ms. Nigro during that period?

04:17PM 16 A. I didn't have the best interactions with her, but I did
04:17PM 17 have to be civil with her because she was with my son and she
04:17PM 18 was with Peter.

04:17PM 19 Q. And how often would you see Ms. Nigro during that period?

04:17PM 20 A. I really didn't see her very often. It was more like
04:17PM 21 phone conversations, or through Messenger. And, truthfully,
04:17PM 22 I really didn't -- I would prefer not to talk to her, I would
04:17PM 23 rather talk to Peter --

04:17PM 24 Q. Okay.

04:17PM 25 A. -- concerning my child.

04:17PM 1 Q. But there were some type of interactions that you had
04:17PM 2 with her during that period that she dated Peter?

04:17PM 3 A. Yes.

04:17PM 4 Q. What years do you think that occurred as far as your
04:17PM 5 interaction with Katrina Nigro?

04:17PM 6 A. Like 2015, 2016.

04:17PM 7 Q. As far as your relationship, I'm sorry -- strike that.

04:17PM 8 As far as the child custody arrangement between you and
04:18PM 9 Peter at the time with your son, what was the arrangement at
04:18PM 10 that time?

04:18PM 11 A. At that time, they had -- he had joint custody with my
04:18PM 12 parents.

04:18PM 13 Q. And so how often would you interact with Peter regarding
04:18PM 14 custody matters involving your son?

04:18PM 15 A. I mean, there really -- we didn't really interact that
04:18PM 16 much about it. Are you talking about visitation, or --

04:18PM 17 Q. Yeah, visitation.

04:18PM 18 A. Yeah. We had an open communication, so on a weekly
04:18PM 19 basis.

04:18PM 20 Q. How often would you see Peter to visit your son?

04:18PM 21 A. On a weekly basis.

04:18PM 22 Q. And during these times that you would interact with
04:18PM 23 Peter, I think you testified that you also interacted with
04:18PM 24 Katrina sometimes?

04:18PM 25 A. Yes.

04:18PM 1 Q. It wasn't necessarily always by your choice, right?

04:18PM 2 A. Yes.

04:18PM 3 Q. But you still interacted with her?

04:18PM 4 A. Um-hum.

04:18PM 5 Q. Would you have conversations with her?

04:19PM 6 A. Yeah, but they were far and few between.

04:19PM 7 Q. And as far as your time in the exotic dancing business,
04:19PM 8 when was it that you first got involved in the exotic dancing
04:19PM 9 business?

04:19PM 10 A. When was it that I got involved?

04:19PM 11 Q. Yeah, year-wise.

04:19PM 12 A. Between 2002, 2003.

04:19PM 13 Q. And when was it that you left the exotic dancing
04:19PM 14 business?

04:19PM 15 A. Why did I leave?

04:19PM 16 Q. No, not why. When was it that you left?

04:19PM 17 A. 2006.

04:19PM 18 Q. And so during the time period that you were on the road
04:19PM 19 with Ms. Nigro either in Rochester or Erie, Pennsylvania, you
04:19PM 20 testified that you hung around with her, correct?

04:19PM 21 A. Um-hum.

04:19PM 22 Q. Did you also hang around with Ms. Nigro back here in the
04:19PM 23 City of Buffalo at various other establishments other than
04:19PM 24 Pharaoh's?

04:19PM 25 A. Yes.

04:19PM 1 Q. And how often would you see her in those establishments?

04:19PM 2 A. It depended on when I worked. I mean, if I worked five

04:20PM 3 days a week, sometimes I would see her all five days,

04:20PM 4 sometimes I would see her two days.

04:20PM 5 Q. And as far as work interaction, you talked a little bit

04:20PM 6 about how you would interact with her at work. How was it

04:20PM 7 that you interacted with Ms. Nigro at work? What kind of

04:20PM 8 context?

04:20PM 9 A. The context usually was to do with, like, customers, or

04:20PM 10 making money, or drinking.

04:20PM 11 Q. So in one context, would you two maybe speak to each

04:20PM 12 other when you were waiting to get on the stage?

04:20PM 13 A. Yes.

04:20PM 14 Q. And in another context, would you two speak to each other

04:20PM 15 when you were around the club when you were interacting with

04:20PM 16 customers?

04:20PM 17 A. Yes.

04:20PM 18 Q. And during this period, did you form an opinion with

04:20PM 19 regard to Ms. Nigro's character and truthfulness?

04:20PM 20 A. Absolutely.

04:20PM 21 **MR. COOPER:** Judge, I'd object at this point. Can we
04:20PM 22 come up?

04:20PM 23 **THE COURT:** Sure.

04:20PM 24 (Sidebar discussion held on the record.)

04:21PM 25 **MR. COOPER:** What's permissible is opinion and

04:21PM 1 reputation, not the person's, not -- I don't believe that the
04:21PM 2 foundation has been properly laid to elicit what the question
04:21PM 3 that was asked.

04:21PM 4 **THE COURT:** Did you form an opinion with respect to
04:21PM 5 Ms. Nigro's character and truthfulness.

04:21PM 6 **MR. TRIPI:** I didn't think he said truthfulness.

04:21PM 7 **THE COURT:** He said character and truthfulness.

04:21PM 8 **MR. SINGER:** Character for truthfulness.

04:21PM 9 **THE COURT:** For truthfulness. Yes, I think that's
04:21PM 10 fine.

04:21PM 11 **MR. COOPER:** Character for truthfulness.

04:21PM 12 **THE COURT:** Right.

04:21PM 13 **MR. COOPER:** Character --

04:21PM 14 **MR. TRIPI:** I didn't hear the -- after the --
04:21PM 15 anything after the word.

04:21PM 16 **MR. COOPER:** I think the word was "and," not "for,"
04:21PM 17 so --

04:21PM 18 **THE COURT:** It says "and." You meant to say "for?"

04:21PM 19 **MR. SINGER:** I thought I said "for."

04:21PM 20 **MR. TRIPI:** I didn't hear the word "truthfulness"
04:21PM 21 either.

04:21PM 22 **THE COURT:** No, "truthfulness" he said.

04:21PM 23 **MR. TRIPI:** Okay.

04:21PM 24 **THE COURT:** I'm reading "truthfulness."

04:21PM 25 **MR. TRIPI:** Okay. My fault.

04:21PM 1 **THE COURT:** So, and a witness's credibility may be
04:21PM 2 attacked or supported by the testimony about the witness's
04:21PM 3 reputation, or having a character for truthfulness or
04:22PM 4 untruthfulness, or by testimony in the form of an opinion
04:22PM 5 about that character that is for truthfulness or
04:22PM 6 untruthfulness.

04:22PM 7 So I will sustain the objection to the form of the
04:22PM 8 question because it says "and" --

04:22PM 9 **MR. SINGER:** Okay.

04:22PM 10 **THE COURT:** -- and you can re-ask.

04:22PM 11 (End of sidebar discussion.)

04:22PM 12 **THE COURT:** The objection to the form of the question
04:22PM 13 is sustained. You can ask another question.

04:22PM 14 **BY MR. SINGER:**

04:22PM 15 Q. So I think I may have said "and" by mistake, so let me
04:22PM 16 re-ask the question again, Ms. Arida.

04:22PM 17 Did you form an opinion with regard to the character for
04:22PM 18 truthfulness of Ms. Nigro during this period?

04:22PM 19 A. Yes, I did.

04:22PM 20 Q. And what is your opinion?

04:22PM 21 A. I think she's a compulsive liar, and I think she's
04:22PM 22 untruthful.

04:22PM 23 Q. So you also mentioned that you worked a lot with
04:22PM 24 Ms. Nigro, correct?

04:22PM 25 A. Yes.

04:22PM 1 Q. How many different clubs do you think you worked with
04:22PM 2 Ms. Nigro during that 2003 to 2006 time period?

04:22PM 3 A. Three or four.

04:22PM 4 Q. And did you interact with other dancers during that
04:22PM 5 period?

04:22PM 6 A. Yes.

04:22PM 7 Q. Did Ms. Nigro interact with other dancers during that
04:23PM 8 period?

04:23PM 9 A. Yes.

04:23PM 10 Q. And you said that you worked in the same clubs as
04:23PM 11 Ms. Nigro?

04:23PM 12 A. Yes.

04:23PM 13 Q. How often would you think you saw her in those clubs
04:23PM 14 during that specific time period?

04:23PM 15 A. A week, are you talking?

04:23PM 16 Q. You know, during that 2003 to 2006 time period, how often
04:23PM 17 do you think you saw her inside the clubs and inside the
04:23PM 18 establishments you worked at?

04:23PM 19 A. I mean, that's in a two-year period you're asking?

04:23PM 20 Q. Yeah.

04:23PM 21 A. Almost -- over 20 times.

04:23PM 22 Q. And to your knowledge, did Ms. Nigro have a reputation
04:23PM 23 within that community as far as her truthfulness?

04:23PM 24 A. Yes.

04:23PM 25 Q. What was that reputation?

04:23PM 1 **MR. COOPER:** Objection. Improper foundation. Again,
04:23PM 2 I'd like to come up, Judge.

04:23PM 3 **THE COURT:** Sure. Come on up.

04:23PM 4 (Sidebar discussion held on the record.)

04:23PM 5 **MR. COOPER:** It's my understanding that the proper --
04:24PM 6 or, the necessary foundation for this line of questioning is
04:24PM 7 about did you have conversations with other people in that
04:24PM 8 community regarding this character trait eliciting, when those
04:24PM 9 conversations were, who they occurred with.

04:24PM 10 I don't think we have any of that.

04:24PM 11 **THE COURT:** How does she know?

04:24PM 12 **MR. SINGER:** I can lay a better foundation.

04:24PM 13 **THE COURT:** Okay.

04:24PM 14 (End of sidebar discussion.)

04:24PM 15 **THE COURT:** The objection is sustained.

04:24PM 16 **BY MR. SINGER:**

04:24PM 17 Q. Ms. Nigro (sic), when you were working inside the clubs
04:24PM 18 during that time period, did you speak with other individuals
04:24PM 19 inside the clubs about Ms. Nigro?

04:24PM 20 A. Yes.

04:24PM 21 Q. And more specifically, did you have conversations with
04:24PM 22 other people inside of those clubs regarding their particular
04:24PM 23 thoughts on Ms. Nigro's truthfulness or untruthfulness?

04:24PM 24 A. Yes.

04:24PM 25 Q. How many people do you think you've spoken to in that

time period about Ms. Nigro's character for truthfulness?

A. Quite a few. The dancers there, whether or not, like, if a customer -- like, she burned a customer or whatever, I mean, it's a very intricate kind of, like, the club circuit is very intricate. So you find things out very fast.

Q. And so we're talking about multiple conversations you had with multiple people over that time period?

A. Yes.

Q. And they were focused on Ms. Nigro?

A. Yes.

Q. And they were focused on her character for truthfulness or untruthfulness?

A. Yes.

Q. And did you form an opinion regarding what her reputation in the community was with regard to her character for truthfulness?

A. I think she's a dishonest con artist.

MR. COOPER: Objection. I'd ask to strike that answer --

THE COURT: Yeah.

MR. COOPER: -- as not responsive to the question.

THE COURT: That answer is stricken.

Listen to the question --

THE WITNESS: Okay.

THE COURT: -- and answer the question, please.

1 The jury is not to consider that in your
2 deliberations.

3 Go ahead, Mr. Singer.

4 **BY MR. SINGER:**

5 Q. Thank you. So again, we -- we already got through what
6 your particular opinion is.

7 A. Okay.

8 Q. What I want to focus on is just Ms. Nigro's reputation
9 with the other people that you spoke with, and interacted
10 with in the exotic dancing community.

11 A. Okay.

12 Q. Did you have information which led you to conclude what
13 Katrina Nigro's reputation was within the exotic dancing
14 community regarding her character for truthfulness?

15 A. Untruthful.

16 Q. And that -- was that the reputation she had?

17 A. Yes.

18 **MR. SINGER:** Okay. Thank you. I have no further
19 questions, Judge.

20 **MR. COOPER:** Judge, I'm going to start with the some
21 cross-examination from the adoption of the witness and --

22 **THE COURT:** Yep.

23 **MR. COOPER:** -- then maybe circle back.

24 **THE COURT:** Go right ahead.

25

CROSS-EXAMINATION BY MR. COOPER:

Q. Ma'am, you have a child with Peter Gerace, you told the jury before, that was in 2006, right?

A. Yes.

Q. Okay. And Peter's still involved in your child's life, right?

A. Yes.

Q. And you care about your child, right?

A. Yes.

Q. And during the time from, let's say, 2006 to 2024, is that 18 years?

A. Yes.

Q. Okay. So for 18 years, you've had an association with Peter, right?

A. Yes.

Q. Whether willingly or unwillingly, I guess, right?

A. Yes.

Q. And you've had an association with Peter's family, right?

A. Yes.

Q. And Peter gives you money for his kid, right?

A. No.

Q. No, that doesn't happen?

A. No.

Q. Did Peter ever give you money for your child with him?

A. No.

04:27PM 1 Q. That never happened?

04:27PM 2 A. I -- I -- no. He had -- no. Because I don't have
04:27PM 3 custody of my child. My family does. My mom does.

04:27PM 4 Q. Does Peter -- maybe I phrased that question poorly.

04:27PM 5 Has Peter ever, since your child was born, financially
04:27PM 6 supported your child?

04:27PM 7 A. Yes.

04:27PM 8 Q. Is that a --

04:27PM 9 A. Sorry, sir.

04:27PM 10 Q. That's okay. Are you okay?

04:27PM 11 A. Yes.

04:27PM 12 Q. Is that important to you?

04:27PM 13 A. Yes.

04:27PM 14 Q. Okay. And you're --

04:27PM 15 **MR. COOPER:** Can we come up real quick? I'm sorry.

04:27PM 16 **THE COURT:** Sure.

04:27PM 17 **MR. COOPER:** I want to be cautious here.

04:27PM 18 (Sidebar discussion held on the record.)

04:27PM 19 **MR. COOPER:** I just want to be cautious here.

04:27PM 20 I don't think this is improper, but she's come to
04:27PM 21 court for Peter, sat on Peter's side of the courtroom,
04:27PM 22 appeared at court appearances.

04:27PM 23 I'm about to say Peter has a court case, and I just
04:28PM 24 want to front that for everybody.

04:28PM 25 I think it's clear from the indictment as well, and I

1 just want to front it. So, if you want to object, object.

2 But --

3 **MR. SINGER:** Yeah, again, I mean, I object on 403
4 grounds, Judge. I just think that the danger of unfair
5 prejudice to Mr. Bongiovanni --

6 (Simultaneous talking.)

7 **MR. COOPER:** This door got opened --

8 **THE COURT:** Stop. I think you can ask have you been
9 to court for a court case that Peter has.

10 You need to link it to this.

11 **MR. COOPER:** Absolutely. Yeah. It's the substance
12 of this case, her child's father is charged in the case.

13 **MR. SINGER:** Count 2 of --

14 (Indecipherable speech.)

15 **MR. COOPER:** It's bias. I have to be able to explore
16 bias when this line of questioning comes out. It didn't
17 happen last time, so I didn't front it. But I've got to --

18 **THE COURT:** Yeah, I think you can do that.

19 **MR. SINGER:** So the bias, I think, Judge, though, if
20 they're probing on bias is that she showed up and supported
21 him in court. I don't think you need to get into the
22 particular case --

23 **MR. COOPER:** It's way more bias when it's this case.

24 **MR. TRIPI:** She's got a rooting interest in this case
25 as it relates to Peter --

04:29PM 1 **THE COURT:** As it relates --

04:29PM 2 **MR. TRIPI:** -- and Katrina is linked heavily, as you
04:29PM 3 know, to that case as well. The charges overlap with this
04:29PM 4 defendant, because Peter is charged with bribing this
04:29PM 5 defendant in this case, and charged with conspiring in Count 2
04:29PM 6 of this case.

04:29PM 7 **THE COURT:** Okay. But why does that have to be
04:29PM 8 related to this case.

04:29PM 9 **MR. COOPER:** Judge --

04:29PM 10 **THE COURT:** Just listen. Just listen to me for just
04:29PM 11 a second.

04:29PM 12 Why isn't the fact that she knows that there is
04:29PM 13 another case against Peter in which Nigro is a witness, why
04:29PM 14 isn't that enough? Why does it have to be related to this
04:29PM 15 particular case?

04:29PM 16 **MR. COOPER:** Because Nigro's testifying against this
04:29PM 17 particular defendant in this particular case that's linked to
04:29PM 18 her husband -- that's linked to -- they're inextricably
04:29PM 19 intertwined. The bias is inextricably intertwined. And I
04:30PM 20 didn't bring this up --

04:30PM 21 **THE COURT:** Right.

04:30PM 22 **MR. COOPER:** -- and it didn't come up at the last
04:30PM 23 trial, so I wasn't prepared to front it for the Court.

04:30PM 24 I'm sure Mr. Singer knew he was gonna do it, I'm sure
04:30PM 25 he intentionally didn't tell me, so now we're making the

04:30PM 1 argument up here.

04:30PM 2 But it's fair game, Judge, when they --

04:30PM 3 **THE COURT:** I think it is fair game.

04:30PM 4 **MR. SINGER:** Yeah.

04:30PM 5 (End of sidebar discussion.)

04:30PM 6 **BY MR. COOPER:**

04:30PM 7 Q. Peter's charged with conduct that got him charged here in
04:30PM 8 federal court, right?

04:30PM 9 A. Yes.

04:30PM 10 Q. And you're aware of that, right?

04:30PM 11 A. Yes.

04:30PM 12 Q. And you've been aware of it since it happened, right?

04:30PM 13 A. Yes.

04:30PM 14 Q. And you've got some pretty strong feelings about it,
04:30PM 15 right?

04:30PM 16 A. Yes.

04:30PM 17 Q. Not happy about it, right, ma'am?

04:30PM 18 A. No.

04:30PM 19 Q. Okay. And you're aware that the conduct is some of the
04:30PM 20 same conduct that's being discussed here in this case, right?

04:30PM 21 A. Yes.

04:30PM 22 Q. And you're aware that a lot of the witnesses that are in
04:30PM 23 the case involving your child's father are the same witnesses
04:30PM 24 that will be here in this case, right?

04:30PM 25 A. Yes.

25 | Q. So my --

04:31PM

1 A. And I know some of --

04:31PM

2 Q. Ma'am, I'm going to ask questions. And I'd ask for

04:31PM

3 you -- I'm going to be respectful to you, and I'd ask that

04:31PM

4 you be respectful to me.

04:31PM

5 A. Okay.

04:31PM

6 Q. And we'll work through it, okay?

04:31PM

7 Just a simple "yes" or "no": Do you dislike Ms. Nigro?

04:31PM

8 A. Yes.

04:31PM

9 Q. Okay. And you have strong feelings for Peter Gerace,

04:31PM

10 right?

04:31PM

11 A. No.

04:31PM

12 Q. No? You sure?

04:31PM

13 A. I don't have strong feelings for him.

04:32PM

14 Q. Okay. You show up in court, and you sit with his family,

04:32PM

15 right?

04:32PM

16 A. For support of my son, I'm his mother.

04:32PM

17 Q. Okay. So my question is: Do you show up in court and

04:32PM

18 sit with his family?

04:32PM

19 A. Once.

04:32PM

20 Q. Okay. That's a yes, right?

04:32PM

21 A. Yes.

04:32PM

22 Q. Okay. So you sit there. And the reason that you show up

04:32PM

23 is to show support for Peter in front of his family, right,

04:32PM

24 ma'am?

04:32PM

25 A. No, it's to show support for my son.

04:32PM 1 Q. Okay. It's not your son who's charged in the case,
04:32PM 2 right?

04:32PM 3 A. I understand that, but it is his father.

04:32PM 4 Q. Okay. You talked about these conversations that you had
04:32PM 5 with other people about Ms. Nigro, right?

04:32PM 6 A. Yes.

04:32PM 7 Q. Can you name the people that you've had these
04:32PM 8 conversations with?

04:32PM 9 A. Customers, other dancers.

04:32PM 10 Q. Names, ma'am. Do you know what a -- a name. Do you know
04:32PM 11 their names?

04:32PM 12 A. Name? No.

04:32PM 13 Q. One name, you can't give?

04:32PM 14 A. It was too long ago, no, I don't know any names.

04:32PM 15 Q. Not a single one?

04:32PM 16 A. Do you want stage names?

04:32PM 17 Q. No, no, no. I'm asking you: Mr. Singer just asked you
04:32PM 18 all these questions, you were happy to answer them, and you
04:32PM 19 were explaining all these various people that you had these
04:32PM 20 conversations with about Katrina Nigro's character for
04:32PM 21 truthfulness --

04:32PM 22 A. Well, it's really not --

04:33PM 23 Q. Ma'am, I'm still asking a question, so wait until I
04:33PM 24 finish the question, and then answer it, okay?

04:33PM 25 I'm going to be respectful to you, but I need to finish

04:33PM 1 my questions, okay?

04:33PM 2 A. Okay.

04:33PM 3 Q. Mr. Singer asked you questions about all the different
04:33PM 4 people that you had these conversations with.

04:33PM 5 A. Um-hum.

04:33PM 6 Q. What I'm asking you to do is tell them one name.

04:33PM 7 A. I don't know one name.

04:33PM 8 Q. Okay.

04:33PM 9 Before you came here to testify, we've met and we've
04:33PM 10 prepared and we've gone over some questions and answers,
04:33PM 11 right?

04:33PM 12 A. Yes.

04:33PM 13 Q. Okay. And during those times, we've never had any
04:33PM 14 consternation like this before, right?

04:33PM 15 A. No.

04:33PM 16 Q. Okay. You've been treated with respect by the FBI agents
04:33PM 17 when they've interviewed you or came to talk to?

04:34PM 18 **MR. SINGER:** Objection, relevance.

04:34PM 19 **MR. COOPER:** I'll move on Judge.

04:34PM 20 **BY MR. COOPER:**

04:34PM 21 Q. Let me ask you a question.

04:34PM 22 Your child's grandmother, would it be fair to say that
04:34PM 23 the charges against Peter have been pretty devastating for
04:34PM 24 that person?

04:34PM 25 A. Yes.

04:34PM 1 Q. Okay. And would it be a fair statement to say that the
04:34PM 2 charges against Peter have been devastating for your son?

04:34PM 3 A. Yes.

04:34PM 4 Q. Your son's been -- and I'm not trying to make light of
04:34PM 5 this at all, but your son's been bullied in school as a
04:34PM 6 result of having human trafficking charges pending against
04:34PM 7 his father, right?

04:34PM 8 A. Yes.

04:34PM 9 Q. That's upsetting to you, right?

04:34PM 10 A. Of course.

04:34PM 11 Q. I understand that.

04:34PM 12 Before you came up here to testify today, you knew that
04:34PM 13 Ms. Nigro was a witness in this case, right?

04:34PM 14 A. Yes, it's in the newspapers.

04:34PM 15 Q. Okay. So I'm just asking if you're aware of it, that's
04:34PM 16 all. You knew that, right?

04:34PM 17 A. Yes.

04:34PM 18 Q. Okay. If Ms. Nigro said Joe Bongiovanni is friends with
04:35PM 19 Peter Gerace, you wouldn't have any reason to disagree with
04:35PM 20 that, right?

04:35PM 21 A. No.

04:35PM 22 Q. None at all, right?

04:35PM 23 A. No.

04:35PM 24 Q. Okay. During the timeframe that Mr. Singer asked you
04:35PM 25 about when you were, I think, seeing Peter on a weekly basis

04:35PM 1 to have visitation with your son, like 2015, 2016 is that
04:35PM 2 when you were sometimes interacting with Ms. Nigro?

04:35PM 3 A. Yes.

04:35PM 4 Q. Would it be fair to say during that time Ms. Nigro was
04:35PM 5 seeing a lot more of Peter Gerace than you were?

04:35PM 6 A. Yes.

04:35PM 7 Q. Okay. And at that name your life, 2015, 2016, were you
04:35PM 8 at Pharaoh's frequently?

04:35PM 9 A. Never.

04:35PM 10 Q. Not at all?

04:35PM 11 A. Not at all.

04:35PM 12 Q. Okay. Do you think Katrina was at Pharaoh's at that
04:35PM 13 time?

04:35PM 14 A. Yes.

04:35PM 15 Q. Okay. So would it be a fair statement for me to say you
04:35PM 16 couldn't tell this jury anything about what was happening at
04:35PM 17 Pharaoh's in 2015, could you?

04:35PM 18 A. I could. She posted it on social media.

04:35PM 19 Q. That's not my question.

04:35PM 20 My question is: If could you tell the jury based on your
04:36PM 21 own observations of what was happening inside Pharaoh's?

04:36PM 22 A. No.

04:36PM 23 Q. You couldn't do that, right?

04:36PM 24 A. No.

04:36PM 25 Q. Okay.

04:36PM 1 **THE COURT:** How much more do you have, Mr. Cooper?

04:36PM 2 **MR. COOPER:** I'm not sure, Judge.

04:36PM 3 **BY MR. COOPER:**

04:36PM 4 Q. Earlier on direct examination, towards the end of the
04:36PM 5 direct examination, I asked you a question about did you have
04:36PM 6 a confrontation with Peter about these photos; do you
04:36PM 7 remember being asked that question?

04:36PM 8 A. Yes.

04:36PM 9 Q. Okay. And I asked you if that happened close in time
04:36PM 10 to -- or, the same day, rather, to finding out what the
04:36PM 11 defendant did for work; do you remember that question?

04:36PM 12 A. Yes.

04:36PM 13 Q. And you said you didn't think it was the same day; do you
04:36PM 14 remember that?

04:36PM 15 When I just --

04:36PM 16 A. Can you --

04:36PM 17 Q. That you didn't learn what the defendant did for work on
04:37PM 18 the same day that you had this confrontation with Peter about
04:37PM 19 the Playboy Bunny photos; do you remember that?

04:37PM 20 **MR. SINGER:** Objection. Outside the scope.

04:37PM 21 **MR. COOPER:** Judge, I think --

04:37PM 22 **THE COURT:** No, overruled.

04:37PM 23 **BY MR. COOPER:**

04:37PM 24 Q. Do you remember I asked you that on direct?

04:37PM 25 A. Yes.

04:37PM 1 Q. And you said you didn't think that happened on the same
04:37PM 2 day?

04:37PM 3 A. I don't think that happened. But I learned he was a DEA
04:37PM 4 agent --

04:37PM 5 Q. Okay.

04:37PM 6 A. -- on that day particularly.

04:37PM 7 Q. Okay. So that's what I'm getting at, ma'am. The day
04:37PM 8 Peter confronts you about these photos of you in the bunny
04:37PM 9 outfit --

04:37PM 10 A. Yes.

04:37PM 11 Q. -- is that the same day that you learned that this
04:37PM 12 defendant works as a DEA agent?

04:37PM 13 A. Yes.

04:37PM 14 Q. Okay.

04:37PM 15 A. I mean, obviously he -- yeah, he's a --

04:37PM 16 Q. Just yes, right? Is that the answer?

04:37PM 17 A. Yes.

04:37PM 18 Q. Okay.

04:37PM 19 **MR. COOPER:** Can I just have one second, Judge?

04:37PM 20 **THE COURT:** Yes.

04:37PM 21 **BY MR. COOPER:**

04:38PM 22 Q. As you sit here today, were you at the Boss Restaurant
04:38PM 23 with the defendant and Peter Gerace and Katrina Nigro in
04:38PM 24 2016?

04:38PM 25 A. Was I at -- the what?

04:38PM 1 Q. The Boss, a restaurant. Did you go to that?

04:38PM 2 **MR. SINGER:** Objection, outside the scope.

04:38PM 3 **MR. COOPER:** No, Judge.

04:38PM 4 **THE COURT:** How is that --

04:38PM 5 **MR. COOPER:** I don't want to argue in front of the
04:38PM 6 jury. I mean, I'll come up.

04:38PM 7 **THE COURT:** Come on up. Come on up. Come on up.

04:38PM 8 (Sidebar discussion held on the record.)

04:38PM 9 **MR. COOPER:** So what I'm going to do with -- what I
04:38PM 10 intend to do with this line of questioning, if I'm permitted,
04:38PM 11 is show different access to information, different access to
04:38PM 12 Peter and the defendant.

04:38PM 13 So Mr. Singer brought up through this impeachment
04:39PM 14 about character and truthfulness, he brought up how much she
04:39PM 15 interacted with Peter, how much she interacted with Katrina,
04:39PM 16 and when those things happened.

04:39PM 17 I'd like to now clarify on my cross-examination that
04:39PM 18 she wasn't around for other periods of time.

04:39PM 19 That's directly responsive to the direct that
04:39PM 20 Mr. Singer did.

04:39PM 21 **MR. SINGER:** So she -- she already testified to the
04:39PM 22 exact periods that she had interaction with Peter.

04:39PM 23 **THE COURT:** Why can't he explore that in response to
04:39PM 24 your cross-examination -- or, direct examination?

04:39PM 25 **MR. SINGER:** Because this is going into a totally

different direction, Judge. This has nothing to do with how often she would see Peter, or how often she would see Katrina Nigro. It has absolutely nothing to do with that.

MR. COOPER: Judge, I'm very familiar with the way that you rule on questions for a cross-examination, and I think that this falls squarely within, hey, you went in one direction on direct, now cross gets to show a different piece of that.

MR. SINGER: But how does the --

MR. COOPER: That's how cross is.

MR. SINGER: -- interactions from Boss inform anything about what she testified to? I guess that's where I'm missing the link here.

MR. COOPER: Because she wasn't there for it, that's the point.

He doesn't have to like the question, but it's --

THE COURT: Easy.

MR. COOPER: -- responsive to --

THE COURT: Easy.

MR. COOPER: -- how much time --

THE COURT: Easy.

MR. COOPER: -- they spent together.

THE COURT: Everybody calm down. Let's do this slowly and logically.

So you're trying to show that she doesn't have the

1 kind of access to Katrina Nigro --

2 **MR. COOPER:** To Peter and Katrina during time frames
3 that Katrina came in and offered testimony to this jury about,
4 right? So they choose to --

5 **THE COURT:** Yes.

6 **MR. COOPER:** -- go through this door --

7 **THE COURT:** Okay.

8 **MR. COOPER:** -- without it --

9 **MR. SINGER:** So she --

10 **THE COURT:** But what he's saying is that during these
11 time periods that are crucial to Katrina's testimony, this
12 witness is not having -- is not in contact with her and Peter.

13 **MR. SINGER:** So she testified to the fact that she
14 would interact with Peter and with Katrina during the child
15 care turnover visitations.

16 **THE COURT:** Right.

17 **MR. SINGER:** And that was the extent of her
18 interaction during that period.

19 **THE COURT:** Right.

20 **MR. SINGER:** That's all. So I guess the purpose of a
21 cross is to show a contradiction in that. There's no
22 contradiction --

23 **THE COURT:** No, no, no. I don't think so. I think
24 the purpose of the cross is to show that the interaction was
25 even more limited, and of course he can do that.

25 Q. Okay. As you sit here today, you're not aware of whether

04:42PM 1 there's text messages about a dinner that occurred at the
04:42PM 2 Boss Restaurant in 2016, right?
04:42PM 3 A. No.
04:42PM 4 Q. You never saw those?
04:42PM 5 A. I never saw text messages.
04:42PM 6 Q. You wouldn't know if they exist, right?
04:42PM 7 A. No.
04:42PM 8 Q. You're not aware of whether Joe Bongiovanni ever texted
04:42PM 9 Peter Gerace and said, hey, what's your address so I can send
04:42PM 10 you a thank you card?
04:42PM 11 You don't know if that happened, right?
04:42PM 12 A. No.
04:42PM 13 Q. Okay. And you weren't there for the dinner, so you don't
04:42PM 14 know what happened at the dinner either, right?
04:42PM 15 A. No.
04:42PM 16 Q. Okay. You testified on one of your examinations, I don't
04:42PM 17 recall which one, about women who work in exotic dance clubs
04:42PM 18 using drugs, right?
04:42PM 19 A. Yes.
04:42PM 20 Q. That's something that happens, right?
04:42PM 21 A. Yes.
04:42PM 22 Q. Have you seen women that work in exotic dancing clubs
04:42PM 23 that have track marks on their arms?
04:42PM 24 A. I haven't seen that personally.
04:42PM 25 Q. Okay.

04:42PM 1 A. I mean, I worked before the opiate epidemic, so I didn't
04:42PM 2 see that.

04:42PM 3 Q. Got it. Did you see woman who showed signs of severe
04:43PM 4 drug addiction working at those clubs?

04:43PM 5 A. Yes.

04:43PM 6 Q. Did you see drugs distributed at the clubs?

04:43PM 7 A. Yes.

04:43PM 8 **MR. SINGER:** Just for clarification, are we back on
04:43PM 9 redirect now?

04:43PM 10 **MR. COOPER:** Crossing.

04:43PM 11 **THE COURT:** I'm -- okay, he's still crossing.

04:43PM 12 **MR. SINGER:** Can we approach?

04:43PM 13 **THE COURT:** Sure.

04:43PM 14 (Sidebar discussion held on the record.)

04:43PM 15 **MR. SINGER:** That's the reason I interrupted, Judge,
04:43PM 16 is because it's a leading objection.

04:43PM 17 If we're back on redirect, which I think we are, all
04:43PM 18 these questions start to go to information I solicited not
04:43PM 19 having to do with anything about an opinion or reputation
04:43PM 20 regarding truthfulness, but with regard to what Ms. Arida
04:43PM 21 testified to on direct.

04:43PM 22 So if we're back into that area, which I think we
04:43PM 23 squarely are, then we've got to go back into -- he's direct
04:43PM 24 and cross.

04:43PM 25 **THE COURT:** It wasn't leading.

04:43PM

1

MR. COOPER: This is --

04:43PM

2

THE COURT: I didn't think the questions were

04:43PM

3

leading.

04:43PM

4

MR. COOPER: I think my tone of voice invokes

04:43PM

5

objection sometimes, but I'm --

04:44PM

6

THE COURT: Don't lead now.

04:44PM

7

MR. COOPER: Well, Judge, I would just -- there's a

04:44PM

8

line of cross-examination about -- so, he evokes this

04:44PM

9

reputation, we talk about access to Pharaoh's when there was

04:44PM

10

access to Pharaoh's --

04:44PM

11

THE COURT: Right.

04:44PM

12

MR. COOPER: -- with whether she knows it or not,

04:44PM

13

whether she knows it or not, this jury's heard testimony from

04:44PM

14

lots of witnesses about stuff that's gone on at Pharaoh's with

04:44PM

15

respect to drug addiction. So I'm exploring that now in the

04:44PM

16

context of my cross-examination of her that I didn't expect to

04:44PM

17

be doing today. But this is where we were. I don't have a

04:44PM

18

cross written out because I found out about it 25 minutes ago.

04:44PM

19

THE COURT: We're ending at 5, so --

04:44PM

20

MR. COOPER: Okay.

04:44PM

21

THE COURT: If we've got to bring her back Monday,

04:44PM

22

we'll bring her back Monday.

04:44PM

23

MR. COOPER: Okay.

04:44PM

24

(End of sidebar discussion.)

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1 **BY MR. COOPER:**

2 Q. You've seen signs of somebody that's heavily using drugs

3 when you've worked in these clubs, right?

4 A. Yes.

5 Q. That's something that happens?

6 A. Yes.

7 Q. You've seen people distributing drugs in those contests,

8 right?

9 A. In other clubs?

10 Q. In clubs, yeah.

11 A. Yes.

12 Q. Okay. So if Ms. Nigro said that women use drugs at

13 Pharaoh's, you wouldn't have any reason to disagree with

14 that, right?

15 **MR. SINGER:** Objection to the hearsay.

16 **THE COURT:** Sus --

17 **MR. COOPER:** So I'm not asking her to --

18 **THE COURT:** Hang on.

19 **MR. COOPER:** -- elicit an out-of-court statement.

20 **THE COURT:** Yeah. Overruled. I'll allow that.

21 **BY MR. COOPER:**

22 Q. If Ms. Nigro said women who worked at Pharaoh's used

23 drugs, you wouldn't have any reason to disagree with that,

24 right?

25 A. No.

Q. If she said women who worked at Pharaoh's had opiate addictions, you wouldn't have any reason to disagree with that, right?

MR. SINGER: Objection, same basis.

THE COURT: Overruled.

BY MR. COOPER:

Q. If she said that women who worked at Pharaoh's bought drugs from people at Pharaoh's, you wouldn't have any reason to disagree with that, right?

A. No.

MR. SINGER: Sorry, Judge. Again, I'll have to object for the record.

THE COURT: I understand. I understand.
Overruled.

BY MR. COOPER:

Q. If she said Peter blew lines of coke, would you have any reason to disagree with that?

A. No.

Q. If she said that women at Pharaoh's were put in precarious situations with men that came to Pharaoh's, would you have any reason to disagree with that?

MR. SINGER: Objection, hearsay and 403.

THE COURT: Overruled.

THE WITNESS: Yes.

04:47PM 1 Q. Did Ms. Nigro tell you and others that she --

04:47PM 2 **MR. COOPER:** Objection. Specific instances are
04:47PM 3 improper, Judge.

04:47PM 4 **MR. SINGER:** Unless the witness is impeached.

04:47PM 5 **THE COURT:** Okay. We are going to quit for the day,
04:47PM 6 folks. So remember my instructions about not making up your
04:48PM 7 mind about anything until the case has been given to you to
04:48PM 8 deliberate. Don't communicate about the case with anyone.
04:48PM 9 Again, this is a weekend, so you'll be together with family,
04:48PM 10 don't tell them anything about this case. Don't use tools of
04:48PM 11 technology to try to learn anything about the case or to
04:48PM 12 communicate about the case. If there's any news coverage
04:48PM 13 about the case whatsoever, in the newspaper, on the radio, on
04:48PM 14 TV, on the internet, don't watch or listen or read that while
04:48PM 15 the case is in progress. You'll be able to read plenty when
04:48PM 16 it's over, if there is any, but don't look for anything now.
04:48PM 17 And if you see anything inadvertently, let me know about it.
04:48PM 18 Okay? We'll see you Monday at 9:30. Monday, Tuesday, at
04:48PM 19 9:30. And then Friday at 9:30. But Wednesday and Thursday we
04:48PM 20 will be down. Okay?

04:48PM 21 Everybody have a great weekend, and I guess that's
04:49PM 22 it. Thanks.

04:49PM 23 (Jury excused at 4:49 p.m.)

04:49PM 24 **THE COURT:** Okay. So, I understand -- let's excuse
04:49PM 25 the witness.

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THE COURT: So let me go back and ask the question:
nt to brief this?

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MR. SINGER: Well, I phrased it a different way.

04:51PM 1 She offered her opinion about Ms. Nigro's
04:51PM 2 untruthfulness. She also offered her opinion regarding the
04:51PM 3 reputation of Ms. Nigro for her untruthfulness.

04:51PM 4 On cross-examination, the government did two things:
04:52PM 5 1, is that they attacked her credibility on the basis
04:52PM 6 of her opinion on bias grounds.

04:52PM 7 Number 2, they offered multiple instances of specific
04:52PM 8 acts of what they would believe are truthful statements
04:52PM 9 that -- that the witness would not disagree were untruthful.

04:52PM 10 That is what I believe opened the door, Judge, to
04:52PM 11 specific acts that I can get into regarding her opinion.

04:52PM 12 I didn't open that door. I actually leveled some
04:52PM 13 objections to some of those questions. That's why the door is
04:52PM 14 open.

04:52PM 15 **MR. COOPER:** Judge, I would respond to that that my
04:52PM 16 questions were about the -- her ability to make certain
04:52PM 17 perceptions when she was associated with Peter, when she was
04:52PM 18 associated with Katrina, if she was invited to certain events.
04:52PM 19 That's completely extraneous to what she wants -- what would
04:52PM 20 like to have this witness talk about, which are totally
04:52PM 21 unrelated things where she thinks --

04:52PM 22 **THE COURT:** And you can put that in your papers, and
04:52PM 23 Mr. Singer can argue to the contrary in his papers.

04:52PM 24 **MR. COOPER:** Got it. Understood.

04:53PM 25 **THE COURT:** The only other thing I wanted to raise

04:53PM 1 was so we had that go-around on the coconspirator statement,
04:53PM 2 that whole big go-around. And there was -- and you might want
04:53PM 3 to look at the transcript, Mr. Singer and Mr. MacKay, because
04:53PM 4 at the beginning of that, there was a question and an answer
04:53PM 5 and an objection that was never really ruled on. And I think
04:53PM 6 that the answer that came out may be contrary to the ruling
04:53PM 7 that I made. So we may need to do a curative instruction on
04:53PM 8 that.

04:53PM 9 So, Ann, if you can get them the transcript of that,
04:53PM 10 just the beginning, before that whole roll-around with the
04:53PM 11 long argument that we had on the -- the coconspirator
04:53PM 12 statement, whether it came in as a coconspirator statement,
04:53PM 13 whether it came in as a statement against penal interests, the
04:53PM 14 very beginning of it.

04:53PM 15 **THE REPORTER:** Sure, Judge.

04:53PM 16 **THE COURT:** The question that triggered that had an
04:54PM 17 answer that I think may be problematic. Okay? So take a look
04:54PM 18 at that, and we can decide what to do about it.

04:54PM 19 **MR. SINGER:** Okay, Judge.

04:54PM 20 **THE COURT:** Okay? Anything else from the government?

04:54PM 21 **MR. TRIPI:** No, thank you, Judge.

04:54PM 22 **THE COURT:** Anything from the defense?

04:54PM 23 **MR. SINGER:** No, Your Honor. Have a good weekend.

04:54PM 24 **THE CLERK:** All rise.

04:54PM 25 (Off the record at 4:54 p.m.)

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on September 13, 2024.

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.